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CURRENT TOPICS

Paying to be Innocent

IN principle and at first sight the idea that costs should normally follow the event in criminal cases is attractive and we have no doubt that the power to award costs to a defendant who is acquitted should be exercised more frequently than it is. An acquittal without an order for costs is very like the Scottish verdict of not proven. On the other hand, there are several factors to take into account before we should accept any general rule. For example, a defendant is sometimes acquitted although the preponderance of evidence, such as would be sufficient for civil proceedings, is against him. Again, it sometimes happens that the difficulties into which a defendant is plunged are partly at least due to his own folly and it would be hard to make the police pay for having taken proceedings. We imagine that some juries would be shocked at the idea that an acquittal would in practice automatically carry with it an order for costs against the prosecution and such a rule might even tempt juries to convict where otherwise they would acquit, which would be wholly undesirable. One way of resolving the difficulty would be to award costs to a defendant only if his defence were disclosed at a sufficiently early stage for it to be tested by the prosecution, but this would drive several coaches and horses through the basic English principle that no one accused of a crime is bound to say anything and we could not entertain it. At present an order for costs in practice marks the court's disapproval of the prosecution. This should not be so. An order should be made in favour of all successful defendants to compensate them for the cost of extricating themselves from situations into which they have fallen through no or little fault of their own. How much further we should go in the direction of compensating the foolish and skaters on thin ice is another matter. A further complication is provided by those who are defended at the public expense.

Penalties

WE all know that the penalties prescribed by statute for different criminal offences are hopelessly illogical. A committee appointed by *Justice* has performed a real public service in revealing the anomalies. In practice, however, we doubt whether any serious injustice or even inconvenience is caused. The committee itself regards the matter as important for two reasons; first, it says that the provisions of the law have an effect upon both judicial and lay attitudes to crimes, because if the maximum penalty is fixed high the crime tends to be regarded as more serious than if it were low. Secondly, the purpose of fixing maxima is to put some limit

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on judicial discretion and if there is to be such a limit for some crimes there should be a limit for all and it should be chosen rationally. In practice, although there are many conspicuous exceptions, the courts appear to be able to hold the balance fairly evenly in spite of the disparities in maxima; while it would be useful if the maxima were rationalised (and it would certainly be a very difficult task), we consider that there are many more urgent tasks which demand the attention of practical reformers.

Bankruptcy in 1958

LAST week the general annual report on Bankruptcy for the year 1958 was published by the Board of Trade (H.M.S.O., 1s. 9d.). There was an increase over 1957 of 189 Receiving and Administration Orders which totalled 2,250 in 1958. In contrast, 1958 saw the lowest net number of Deeds of Arrangement since 1951, there being only 276 such deeds last year, a drop of 37 from the number recorded in 1957. In respect of the Orders, the principal groups of trades affected were builders (230), farmers (129), retail grocers (113), retailers of hardware and electrical goods (93), retailers of clothing and drapery (74), and hotel keepers and publicans (70), accounting for 709 failures in all. In the professional services group which totalled 63 failures (leaving aside a miscellaneous "professional services not elsewhere specified (authors, artists, etc.)" category numbering 66), the largest individual entry is under "Law: barristers, solicitors, etc.," with 16 failures whose liabilities amounted to some £671,000 with assets just short of £98,000; this item was followed in order of magnitude by "Accountants" with corresponding figures of 11 failures, liabilities of over £120,000 and assets of under £16,000. During 1958 there were 1,451 estates finally wound up by official receivers in which an order of release was issued; in that group the value of the largest number of estates (425) was under £25. Orders of release were made during the same period in respect of 715 estates finally wound up by non-official trustees; of those estates 104 fell within the £300 to £500 value group, the biggest group of such estates.

Valete Flick Knives!

THE most formal procedure known to this country has been used to prohibit the manufacturing, selling, hiring, lending or giving of a flick knife. Her Majesty in Parliament has made any of these actions a criminal offence by the Restriction of Offensive Weapons Act, 1959. No provision has, however, been made for the compulsory acquisition or confiscation of such knives (or of flick guns or gravity knives also mentioned in the Act). Owners and holders of stocks of the proscribed knives have until 14th June to dispose of them for the Act is not operative until then. Thenceforth possession of such a weapon will be frozen by law although it appears that no offence would be committed under the Act by its abandonment or surrender to a competent authority such as a police force.

Shoppers and Shopkeepers

WHEN, in *Timothy* v. *Simpson* (1834), 6 C. & P. 499, counsel suggested to Parke, B., that if a man advertised goods at a certain price, he (counsel) had a right to go into his shop and demand the article at the price marked, his lordship replied: "No, if you do, he has a right to turn you out." Some lawyers were reluctant to accept this as a correct statement of law, but the matter was finally settled and the view of Parke, B., upheld by the decision of the Court of Appeal in *Pharmaceutical Society of Great Britain* v. *Boots Cash Chemists (Southern), Ltd.* [1953] 1 Q.B. 401. In that case, SOMERVELL, L.J., said that "in the case of an ordinary shop, although goods are displayed and it is intended that customers should go and choose what they want, the contract is not completed until, the customer having indicated the articles which he needs, the shopkeeper, or someone on his behalf, accepts that offer. Then the contract is completed." We were interested to read that the opposite is true in Poland. According to a report in *The Times*, 26th May, of a recent case heard by the district court of Katowice, a woman brought a successful action for damages against the State trade network for refusing to sell her a dress displayed in the window of one of its shops. The woman, who, as a result of the case, is said to have made herself the "heroine of shoppers" all over Poland, fancied the dress but was told that she could not have it as there were none in stock. Her action succeeded as in Polish law the display of an article constitutes an offer to sell: in this country it is merely an invitation to do business and it is for the customer to offer to buy the goods. It is surprising to find that the State trader in Poland is in a weaker position in this respect than the private shopkeeper in England.

Treasure Trove

IN his work on Prerogative, Chitty said that treasure trove is where any gold or silver "is found concealed in a house, or in the earth, or other private place, the owner thereof being unknown" and he added that it must not have been "casually lost," or "purposely parted with" in such a way as to make it evident that the owner intended to abandon the property altogether. This definition has been adopted by the courts on more than one occasion (e.g., by Farwell, J., in *A.-G.* v. *Trustees of the British Museum* [1893] 2 Ch. 598) and it seems to make clear the reason for a recent decision by the jury at the Southwark coroner's court. After some articles from a church cellar and tower, including an old harmonium, had been burnt in the church yard, 135 gold sovereigns and 25 half sovereigns were found on the ash heap. The church council sold some of the coins, which must have been hidden in the harmonium, because the vicar thought that as they were found above ground the coins would not be classed as treasure trove. The jury took a different view, presumably because the coins were concealed in a "private place," other than in a house or in the earth. Perhaps it should be mentioned that the jury also found that the discovery of the coins had not been intentionally concealed, a common-law misdemeanour, and that the coroner, Mr. R. IAN MILNE, expressed the hope that the vicar would be allowed to retain the amount which he had received in respect of the coins which were sold.

Master G. S. A. Wheatcroft

WE congratulate Master WHEATCROFT on his appointment to fill the Chair of English Law at the University of London in succession to Sir DAVID HUGHES PARRY. The University is the first in the field to appoint a professor whose main speciality is taxation. It will undoubtedly gain by having the services available of one who was a practising solicitor for some twenty-one years and has been a Chancery Master for eight years. In changing his master's seat for a professor's chair Master Wheatcroft will join the small band of solicitors holding senior academic appointments.

DOMICILE

By **the Rt. Hon. Lord Meston**

THE question of domicile gives rise to marked diversities of opinion. Any legislative attempt to alter the law on this subject must not hope for an easy passage.

The importance of this subject cannot be overstated. In the private international law of the United Kingdom a large number of matters fall to be governed by the law of domicile, including testate or intestate succession to moveable property, capacity to marry and the essential (but not formal) validity of marriages; the effect of marriage on the proprietary rights of the spouses in each other's moveable property; the rights and obligations of husband and wife, parent and child, guardian and ward towards each other; legitimacy, legitimation and adoption; and divorce.

On the death of a person domiciled abroad, estate duty is payable on property in this country, though there are certain exceptions concerning holdings of British Government stocks. On the death of a person domiciled here, duty is payable on property here and also on moveable property abroad.

A person's domicile is the country in which he has his home and intends to live permanently. The law regards every person as having a domicile, whether it be the *domicile of origin* which the law confers on him at his birth, or the *domicile of choice* which he may subsequently acquire. If a person, having acquired a domicile of choice, abandons it without acquiring a fresh one, the law regards his domicile of origin as having revived until a fresh domicile of choice is acquired, even though in fact he may never have returned to his domicile of origin.

The present law, in the opinion of some people, suffers from two serious defects—namely, the excessive importance attached to the domicile of origin, and the difficulties involved in proof of intention to change a domicile. The latter alleged defect becomes apparent on a study of the two leading cases of *Winans* v. *Attorney-General* [1904] A.C. 287 and *Bowie* (*or Ramsay*) v. *Liverpool Royal Infirmary* [1930] A.C. 588. Those two cases were both decisions of the House of Lords and illustrate the difficulty involved in the proof of intention to change a domicile.

Attempts to change the law

And so we come to recent abortive efforts to change this admittedly unsatisfactory state of affairs. The Domicile Bill introduced in the House of Lords in June, 1958, provided, among other matters, that "a person's domicile is the country in which he has his home and intends to live permanently." And then the Bill went on to say that "a person who has a home in a country is presumed to intend to live permanently in that country." That was the first presumption. Then the same Bill laid down a second presumption, namely:—"if a person has a home in more than one country he is presumed to intend to live permanently in that one of them with which he is most closely connected." Then the third presumption was "if a person lives in a country mainly because he works there and he has a wife or children whose home is in another country he is presumed to intend to live permanently in that other country."

At the present time one has affirmatively to prove what is a person's intention as to the country in which he proposes to spend the rest of his life. If a person is dead, one can well imagine the difficulties of the executors and advisers of the deceased in proving that intention.

The above-mentioned three presumptions in the Domicile Bill (introduced in June, 1958), altered the burden of proof. If a person had his home in one country, the presumption was that he intended to live permanently in that country, and therefore that country was his domicile. It was true that that presumption could be rebutted by evidence to the contrary. Furthermore, the Bill excluded those presumptions in the following cases. It said that those presumptions "may be displaced by proof of a different intention" and then continued "The presumption that a person intends to live permanently in any country is not raised—(*a*) by his home in that country, if he is entitled to diplomatic immunity in that country or, being in the service of an international organisation or in the public service of that or any other country, he had no home in that country immediately before entering that service." Then there was another way in which the presumptions could be displaced—namely, the presumption was not raised "by his wife's or children's home in that country, if there is in force an order of a court by virtue of which the wife is not bound to cohabit with him or, as the case may be, if he is not entitled to the custody of the children."

Then the trouble began. Business men from Commonwealth countries, and the United States of America, raised the question of how the Bill would affect their nationals who came to England on business for a period of time. It was argued that the above-mentioned presumptions would raise an inference that such visitors to this country were domiciled in England, and to rebut these presumptions the business man from overseas would have to "buy an expensive law case." These fears, it is submitted, were really groundless. Suppose, for example, that an American citizen living in New York is sent by his firm in America to England for a period of even ten to twenty years. During that period of time he has a *house* in England, but his *home* has never ceased to be in America. Unfortunately, however, all cases are not so simple as that, and the variations of the problem are almost unlimited. Incidentally, it may be noted (and this is not an argument in favour of the Domicile Bill) that in the French language there is no word for *home* as we understand the conception. The French talk about *la maison*—the house, and there is no separate word for what we regard as a *home*, which may, in England, be synonymous with the *house* in which we happen to be residing or entirely different therefrom.

Second Domicile Bill

And so the (June, 1958) Domicile Bill was dropped. We come now to the Domicile Bill which was introduced in the House of Lords in February, 1959. This Bill merely preserved and codified the law as laid down in *Winans'* case subject only to the fact that a person would be able to acquire a new domicile at the age of sixteen instead of twenty-one as at present. All the old presumptions that appeared in the previous Domicile Bill found no place in the new Bill. It was hard to see what objection there could be to restating the established law in statutory form. But objections came from all sources. Some wanted the earlier Domicile Bill to be revived. Others wanted the new Bill with safeguards expressly

extended so as to protect people who came to this country on business for a number of years.

In fact the *revenue* question has found its way into the subject of domicile, and some people very logically take the view that revenue considerations (tax and estate duty matters) are quite separate from domicile and should not be entertained at all in deciding whether the law relating to domicile should be altered or otherwise.

Other people express the view that tax and estate duties are very relevant to the law of domicile and that any alterations in that law should contain specific provisions safeguarding the position of visitors from overseas who come to this country, and stay here for appreciable periods of time.

One could let one's pen run away on this subject, and so it is better for the moment merely to state the problem and invite others to express their views.

Tax Planning in Perspective

THE NEW BOSTON TEA PARTY—II

CONTROL OF THE COMPANY

To his father or grandfather, Mr. Jones, managing director of Barset Printing Co., Ltd., at the age of fifty-two, with a holding of 60 per cent. of the issued capital, would have seemed secure from all cares for the future. In fact, we had to tell him that he was sitting on a volcano.

The company, being under the control of five or less persons, is a controlled company both for estate duty under s. 55 of the Finance Act, 1940, and for surtax direction under s. 245 of the Income Tax Act, 1952. If Mr. Jones had control of the company at any time within five years of his death, any shares passing on his death, whether as part of his estate or as gifts *inter vivos*, would be valued for estate duty on the basis of the company's assets. We have calculated that this would mean paying duty, as matters now stand, on £120,000 at 50 per cent., and to find £60,000 duty on the shares alone would be a grave burden for Geoffrey and John, the sons to whom he wishes to leave the business.

In the past a 10 per cent. dividend on the shares has been paid, but since the withdrawal in 1957 of the Chancellor's concession which protected companies maintaining a consistent dividend policy, it is doubtful how long the Special Commissioners will be content with 10 per cent., which represents about 25 per cent. of the profits. A surtax direction would result in the whole of the company's income being apportioned among the members for surtax; the company's accountants would never allow this to happen, but they might be compelled to agree an increased dividend with the Special Commissioners, in order to avoid a direction. An increase of only 50 per cent. in the dividend would cost Mr. Jones £1,360 in additional surtax.

Losing control

The remaining £40,000 shares are held by Mr. Jones' father and aunts, and it is possible that these shares may be given to him by will, since the older generation does not always realise the complications caused by bounty. We have therefore advised Mr. Jones that he should not only lose control now, but should part with *all* his shares to avoid any possibility of regaining control if he should acquire the other 40 per cent. in the future.

Mr. Jones wants to use his shares mainly for the benefit of his four children, and he believes that the age of twenty-five is quite early enough for them to take a vested interest. As the children grow older their needs may differ, and the shares should not necessarily be divided equally between them. He also wants to give his wife some interest in the company, although his main provision for her will be made in other ways.

To meet Mr. Jones' wishes, without involving the family in payment of more tax than is absolutely essential, we have prepared the following scheme.

1. *Gift to the wife*

Ten thousand pounds shares are to be transferred to Mrs. Jones outright. This will not reduce Mr. Jones' surtax, but it will give Mrs. Jones some security in the event of his death, and the shares will not be counted towards control if Mr. Jones should later become possessed of the shares now held by his father and aunts.

2. *Settlements on the children*

A separate settlement of £5,000 shares is to be made on each of the children, the shares to vest at the age of twenty-five. Ann is twenty-two and married. Her husband earns about £2,000 per annum and there is no desperate need for income now, although it may be useful in a few years' time when there will perhaps be children. Ann's settlement therefore directs an accumulation of income until she is twenty-five, and it does not matter that the accumulation would come to an end if Mr. Jones were to die before that time, possibly causing a passing of the settled property on his death, because in any case the property will be liable to duty as a gift if he fails to survive the settlement by five years.

Geoffrey is now twenty, and his settlement will be in similar terms.

The settlements on Jane, who is fifteen, and John, who is only ten, cannot safely provide for accumulation of the income beyond the age of twenty-one. From that age the income will be payable to them until the capital vests at twenty-five.

The result of these settlements will be that no surtax is payable on the income during the periods of accumulation. Ann has no available personal allowances, but the other three children will be able to reclaim income tax in respect of their allowances and reliefs for each year of the accumulation, once they attain the age of twenty-five (Income Tax Act, 1952, s. 228).

So far as estate duty is concerned, the settled shares will be free of duty, and will not be counted towards control, as soon as Mr. Jones has survived the settlements by five years.

The saving of tax

Mr. Jones has now disposed of £30,000 shares, half his total holding. Five thousand pounds shares are being held

for each of the children which means an income of £500 is being accumulated for each. These accumulations are entirely free of surtax, although in Mr. Jones' hands the £2,000 fell roughly within the 7s. 6d. bracket and cost him £750 in surtax.

On £500 each unmarried child is only liable to £84 income tax, but Mr. Jones, whose reliefs and allowances are fully absorbed by other income, would have paid the full rate of £194. The income tax savings will not be realised until the end of the accumulation periods, when claims are made by the children under s. 228, but anticipating these claims the annual saving is :—

Surtax :	£750
Income tax, 3 × (194–84) =	330
	£1,080

This is a very substantial saving to achieve, but it is only possible for a man like Mr. Jones who can afford to accumulate income, and has capital assets which he can alienate for the purpose. The average father who needs his whole income for his children's education, the salary-earner with no disposable capital—neither of these can reduce their taxation by one penny in the way we have described.

(To be continued) PHILIP LAWTON.

Common Law Commentary

FACT, LAW AND "PROPOSITIONS OF GOOD SENSE"

THE House of Lords have given a salutary decision in *Qualcast (Wolverhampton), Ltd.* v. *Haynes* [1959] 2 W.L.R. 510 ; p. 310, *ante*, by pointing out that, since the abolition of juries in negligence cases, one must beware of treating as principles of law many of the statements in reported decisions relating to the particular facts of the case reported. In the day of the jury the judge would direct the jury as to the existence or otherwise of a duty of care in the particular case, e.g., by a master towards his servant, and leave it to the jury to decide the question whether the duty had been fulfilled. The jury's verdict was not a precedent and only in rare cases would the judge's direction to the jury be reported.

This does not mean that no more cases of negligence need be reported, but only that their applicability and persuasive value must not be overrated. They are as useful in indicating the court's attitude to problems of negligence as would have been the publication of the reasons by which juries arrived at their decisions under the former system. (In view of the tales one hears about juries one is tempted to say that publication of their reasons would have been even more salutary, but no doubt, on the whole, they did their job well.) But when a judge finds a previous case based on what appear to be comparable facts and takes the decision as laying down propositions which are so binding on him that he must decide the case in front of him differently from what he would if he felt himself free from authority, then the judge has erred where it can be shown (as usually it can) that the propositions in question were merely arguments for deciding whether there was or was not in the previous case a breach of the duty of care.

The matter is well put by Lord Denning, who said (at p. 519) : "The question that [arose] was this : What did reasonable care demand of the employers in this particular case ? That is not a question of law at all but a question of fact. To solve it the tribunal of fact—be it judge or jury—can take into account any proposition of good sense that is relevant in the circumstances, but it must beware not to treat it as a proposition of law. I may perhaps draw an analogy from the Highway Code. It contains many propositions of good sense which may be taken into account in considering whether reasonable care has been taken, but it would be a mistake to elevate them into propositions of law."

Employer's encouragement for use of safety equipment desirable but not a duty

The decision is also valuable for another reason : in earlier decisions it appeared that a proposition of law had been developed to the effect that in cases where there was a duty to provide safety equipment (which in general arises from statutory provisions) it was not enough merely to inform workmen that such equipment existed, but that there was a duty to take steps to urge the men to use the equipment. The *Qualcast* case relegates that from the level of a proposition of law to a proposition of good sense : something to be taken into account but not a duty invariably imposed on masters in respect of all workmen exposed to the dangers against which the law requires the provision of the equipment.

The *Qualcast* case was concerned with the failure by a workman to use safety equipment. He suffered burns on the feet through the spilling of molten metal whilst engaged in casting. He was not wearing special protective boots nor spats. It was noteworthy that although there were statutory regulations dealing with this particular work—metal casting—the regulations were silent on the question of the provision of any equipment for the workmen.

The county court judge found that the plaintiff suffered injury by burns from molten metal because the clothing which he was wearing was not a sufficient protection. He rejected the plaintiff's story that the accident was caused by tripping over an obstruction whilst carrying the ladle. The plaintiff claimed that the employers were negligent in (1) failing to provide any or any proper spats or other sufficient protective clothing, and (2) failing to provide a safe system of work and proper plant and equipment. It was found that the employers did make spats available, and the questions resolved themselves into the generalised problem : what was the nature of the duty of the employers to the workman to provide protective clothing and, particularly, whether they should take steps to ensure that men in fact wore any particular clothing ?

Crucial factor

The crucial factor was this : The plaintiff was thirty-eight years old and had been a moulder all his working life, but had been employed by the defendants for only about three months at the time of the accident. He had not been "urged" to wear protective clothing because he was known to be experienced. There was evidence that if the plaintiff

had been a learner he would have been advised about wearing protective clothing. The county court judge said that if he were not bound by authority he would have decided that the plaintiff was so experienced that he needed no warning and that there was, therefore, no negligence on the part of the defendants. He then proceeded to discuss certain authorities by which he considered that he was bound to come to a different conclusion.

The present writer has on more than one occasion investigated foundry accidents of this type and has learned of the reluctance of workmen to wear the heavier boots that can be obtained plus spats, mainly on account of the great heat. They prefer boots not too tightly laced that can be kicked or wrenched off if metal is spilled on them, and a loose trouser falling over the boots. No doubt those responsible for the regulations had some knowledge of the conditions under which foundry men are prepared to work and for that reason omitted any regulation which might be difficult to enforce.

Few binding cases in negligence

One of the cases which influenced the county court judge was apparently a case relating to pneumoconiosis. Lord Keith of Avonholm points out (at p. 515) that that is a very different type of case because the risk, the nature of the risk and the workman's appreciation of the risk and the consequences of falling a victim to the risk are in an entirely different plane. "In the sphere of negligence," he says, "where circumstances are so infinite in their variety, it is rarely, if ever, that one case can be a binding authority for another. A case may enounce a principle which may be capable of application in other cases, but I know of no principle that in all cases and all circumstances an employer is liable for failing to see that a foundry man is supplied or supplies himself with spats or boots, or at the lowest is 'exhorted or pressed with ardour' to avail himself of such protection."

On this particular aspect of the matter Lord Denning puts the matter with characteristic clarity: "You start with the fact that, when a moulder in an iron foundry carries a ladle full of hot molten metal and pours it into the moulding box, there is a danger that the hot metal may splash over on to his feet. In order to safeguard him from injury, the employers ought, I should have thought, to provide protective footwear for him. But in saying so, I speak as a juryman, for it is not a proposition of law at all, only a proposition of good sense. If the employers fail to provide protective footwear, the tribunal of fact can take it into account in deciding whether the employers took reasonable care for the safety of their men . . . But the question here is not whether the employers ought to provide protective footwear for the men—for they clearly did so. The question is whether, having provided spats and boots, they ought to go further and *urge* the men to wear them. Here too, I should have thought that the employers ought to advise and encourage the men to wear protective footwear. But again I speak as a juryman and not as a judge: because it is not a proposition of law at all, but a proposition of good sense . . ."

Only Lord Denning attempts to deal—quite shortly—with causation, expressing the view that, even if it had been the duty of the employers to urge this workman to wear spats, he did not think their omission should be taken to be one of the causes of the accident. A judge may infer that an omission to perform a duty is the cause of an accident, but he is not bound to do so. In this case the workman, after he recovered from the injury, went back to work and did the same as before. He never wore spats. From this it is concluded that no advice beforehand would have had any effect.

This decision should have the effect of, on the one hand, encouraging a party to press his claim where the factual difference between his case and a reported case is one of detail rather than in the overall pattern, and, on the other hand, encouraging judges to disregard earlier decisions where they feel that the differences are sufficiently significant.

L. W. M.

NATIONAL CONDITIONS OF SALE, 17th EDITION—II

THE explanatory notes issued with copies of the new edition of the National Conditions of Sale state that there are two principal new features. The first is that it provides facilities for its use on sales by way of grant of a new lease or underlease at a premium. Some of the wording which has been inserted for this purpose was mentioned in the course of discussion of certain new terms contained in the first part of this article (p. 421, *ante*), but it is now necessary to note how the conditions apply to a grant of a lease or underlease at a premium. The second of the main new features is the special provision for cases in which the purchaser is relying on an advance from a building society or other mortgagee to complete his purchase.

Grant of lease or underlease

It will be remembered that the Particulars are divided into two parts. The first, which describes the property sold, should contain a physical description. The second, which describes the interest sold, will normally state that the interest is freehold or that it is leasehold for the residue of the term created by a specified lease or underlease. Where, however, the transaction is proposed to be carried out by the *grant* of a lease or underlease the draftsman suggests that the interest should be described, for example, in the following terms: ". . . leasehold for a term of years from , 19 , to be granted by lease/underlease from the vendor to the purchaser at a rent of £ per annum."

As was previously noted, a freeholder who has contracted by open contract to grant a lease cannot be compelled to deduce title (Law of Property Act, 1925, s. 44 (2)). Under an open contract to grant an underlease, the sub-lessor is not obliged to show the title of the person who granted his lease but must produce a copy or abstract of that lease (*ibid.*, s. 44 (3)). For reasons which were discussed in the first of these articles, it is often reasonable that the contract should require the lessor to deduce title, for instance, if a substantial premium is payable. Consequently, Special Condition *F* of this new edition is prepared so that appropriate wording can be inserted requiring the lessor to deduce title to the freehold and other superior titles, if any. The draftsman's example, taken from the explanatory notes, of wording which adequately specifies the title to be deduced was quoted in the first article. The advisability of considering what title should fairly be deduced, and the appropriate terms for insertion in Special

Condition *F*, are mentioned again because the rules applicable under an open contract should be extended in almost all transactions which can properly be described as " sales " by way of grant of a new lease or underlease.

A sale by way of grant of a lease or underlease occurs when a contract is made in the usual way, providing for the payment of a premium and for the grant of a lease or underlease in lieu of a conveyance of the freehold. Where the Particulars specify, as mentioned above, that the interest sold is a term of years " *to be granted* by lease/underlease from the vendor to the purchaser " or contain words to the same effect (which case must be distinguished clearly from that of the assignment of an *existing* lease or underlease), then National Condition 19 (1) (inserted for the first time in the 17th ed.) provides that " the lease or underlease and counterpart shall be prepared by the *vendor's* solicitor in accordance (as nearly as the circumstances admit) with a form or draft *annexed to the contract or otherwise sufficiently identified by the signatures of the parties or their solicitors.*" It is important to note that the form of the lease must be agreed before signature of the contract and must be adequately identified. In practice it will almost invariably be a standard form used on the vendor's estate. Apart from the preparation of the lease by the vendor's solicitor, the general conditions of sale apply and the transaction is carried out in the manner appropriate to a sale of the freehold.

Condition as to mortgage

For many years now a high proportion of purchases of houses have been dependent on the ability of the purchaser to borrow most of the price from a building society. It is usually possible to ascertain before signing a contract approximately how much money will be advanced to the particular purchaser on the security of the house for which he is negotiating. Nevertheless, an official of a building society can rarely give a precise estimate. A valuation carried out by the society's surveyor may differ from the price fixed. Close inquiry may show that the borrower cannot offer a satisfactory personal guarantee. Consequently, however careful and helpful the building society has attempted to be, the advance they are ultimately willing to make may be appreciably less than that which the purchaser expected to receive when he signed a contract to buy. Many purchasers are able to pay out of their own resources comparatively small sums only, and the House Purchase and Housing Act, 1959, which will come into operation on 14th June next, may encourage people of small means to buy older houses.

It may be suggested that no such purchaser should sign a contract until he knows exactly how much money he can borrow. The disadvantage of this course of action is that it involves an application to a building society and payment of a survey fee at a time when the vendor is not bound to sell and so may enter into a contract with someone else. The explanatory note to the new edition of the National Conditions quotes the following clause, which may be added to the Special Conditions :—

> " *K.* The purchase is made on the footing that the purchase money will be provided with the aid of an advance of a sum of £ from and Condition 9 of the National Conditions of Sale shall apply accordingly."

National Condition 9 provides for a case where by the Special Conditions the purchase is expressed to be on the footing that the purchase money will be provided with the aid of an advance *of a specified sum from a named person.* It follows that the exact words instanced in the explanatory note need not be used but it is essential that the amount of the advance and the name of the proposed mortgagee (whether or not a building society) should be stated. Difficulty may well be caused by a careless attempt to incorporate this condition, for instance, if the vendor's agent merely inserts a vague reference to a " satisfactory " mortgage.

If Condition 9 is duly incorporated then, subject to the exception mentioned below, on the proposed mortgagee's declining for any reason to make an advance to the purchaser of at least the specified sum, the purchaser may by notice in writing rescind the contract. This right is available at any time on or before completion date or (in case of delay in completion) at any time thereafter, unless or until the purchaser has deprived himself of the equitable remedy of specific performance. Understandably there is no right of rescission where the proposed mortgagee declines to make an advance solely by reason of an objection which the *vendor* is able and willing to remove. (We wonder why the draftsman prepared the clause in such a form that the purchaser can rescind even though the mortgagee's objection could be removed by the *purchaser.*)

We think that use of this condition will often be advantageous to purchasers. The question arises whether vendors will agree to its insertion. The disadvantage to them is that sales may go off after appreciable delay. We are inclined to forecast that, in practice, it will often be in the interest of a vendor to execute a contract on these terms. On sales of small houses the price is often largely determined by the maximum advance a building society will make to a sound borrower. So it may well be in the interest of a seller to enter into a conditional contract of this kind so that the valuation of a building society can be obtained. Very often the vendor's agent advises prospective purchasers of the likely amount of a building society advance and his prospect of serving the vendor's interest by negotiating a sale is dependent on the decision of the society. It may well be that the doubt whether a purchaser can safely sign a contract on the basis of that advice can be resolved by use of this form.

It must be appreciated that the offer of a mortgage grant can be conditional, for instance, on repairs being done to the property or on the obtaining of a guarantor. What is more, other terms of a mortgage than the mere amount of the advance may be relevant. For example, a building society may, in a special case, be willing to make an advance only if the term during which repayments are to be made is unusually short. Consequently, there may well be occasions for dispute as to whether, in spite of a particular offer of an advance, the purchaser can rescind the contract. It may be argued that a term must be read into the condition to the effect that an offer of an advance on unusual terms is equivalent to declining to make an advance. This is not the occasion for speculation as to the exact meaning of the clause giving the right of rescission. Even if an element of doubt is felt about its effect in unusual circumstances, the new condition can be welcomed as a sound attempt to meet the needs of the parties involved in a large number of transactions.

Delay in completion

The new edition makes a further attempt to lay down a simple and fair remedy for delay. It is usually thought that, where time is not of the essence, the equitable rules do not give a vendor an adequate method of securing speedy completion by a dilatory purchaser. Special conditions have been drafted, usually on the basis that after service of a

certain notice to complete the vendor should have a right of resale. There has often been confusion between an ordinary notice to complete (which cannot validly be served until there has already been improper delay and which is designed to make time of the essence) and a notice served under such an express condition. One result has been some difference of opinion as to whether such a contractual notice could properly be served before the delay has continued for so long that equity would regard it as unreasonable.

The important words of the new National Condition 22 are as follows: "At any time on or after the completion date, either party, being himself able, ready and willing to complete, may . . . give to the other party . . . notice in writing requiring completion of the contract in conformity with this condition. Upon service of such notice . . . it shall become and be a term of the contract, in *respect of which time shall be of the essence thereof*, that the party to whom the notice is given shall complete the contract within twenty-eight days . . ." First, we must note that either party may serve the notice. Secondly, its effect is to make time of the essence. It does not directly confer on a vendor who has served a notice a right to resell (although it provides for recovery of any loss if the purchaser fails, otherwise than by reason of his death, to complete in conformity with this condition and the vendor resells within six months).

This new drafting seems to take account of essential rules and we think it is successful in removing doubts which formerly existed. Parties may stipulate that time shall be of the essence and thus avoid the rather lax attitude of courts of equity to delay. Consequently, the provision enabling a party to make time of the essence appears perfectly valid even if the notice is served on, or on the day following, completion date. A time for completion twenty-eight days after service is then fixed and, in respect of this term, time is of the essence. It follows that if the time so specified is not adhered to and, as is usual, it is the purchaser who is in default, the vendor may treat the contract as repudiated by the purchaser. The vendor may then resell. It is not necessary that the contract should express this right; the contract having ceased to exist, the vendor is under no obligation to the person who agreed to buy but who has broken the contract. The vendor may, nevertheless, claim as damages, for breach of the contract, the difference between the contract price and the price on resale (including expenses of resale).

No useful purpose is served by a detailed discussion of earlier conditions applicable to delay. Our view is that, by referring directly to a completion date in respect of which time is of the essence, the draftsman has produced a sound workable rule that is fair to both parties.

MISCELLANEOUS CONDITIONS

Title commencing with a will

The general condition which was numbered nine in the previous edition required a purchaser to assume, where the title to freeholds commenced with a will, probate or letters of administration, that the deceased was at his death seised in fee simple free from incumbrances. Only if the deceased died less than twelve years before the contract was the purchaser entitled to even a statutory declaration of seisin. It is difficult to understand why purchasers accepted this, and a similar condition in The Law Society's Conditions of Sale, for so long, because the titles stipulated for were often almost valueless. Such conditions were recently criticised in the First Supplement to Emmet on Title, 14th ed., as unduly harsh, and that criticism was supported by a learned writer in the *Law Times*, vol. 225, pp. 294, 295. It is with pleasure, therefore, that we record the absence of that or any similar condition from the new edition.

Inclusion of chattels

A special condition is printed for use where the sale includes chattels, fittings or other separate items. The main change made by the new edition is that the wording contemplates that an inventory will be annexed (which is normally more convenient that the insertion of a list in the conditions themselves). Alternative wording is provided for cases where the price has been agreed or where it is to be ascertained by valuation.

Apportionments

A number of minor doubts exist about apportionments which require to be made on completion. In order to remove some of them express terms have been inserted in this edition of the National Conditions. For instance, it is expressly stated that for purposes of apportionment of income and outgoings completion day is itself apportioned to the vendor.

The better opinion is that, in the absence of provision to the contrary, a yearly rent payable quarterly on the usual quarter days should be apportioned on the basis of the number of days in the current quarter. This rule (which is often neglected in practice) is negatived by a statement that rents are to be apportioned according to the period in respect of which they are payable, and that apportionment of yearly items (whether or not they are payable by equal quarterly, monthly or other instalments) shall be according to the relevant number of days related to the number of days in the full year.

Payment of interest

The new edition retains the customary basic rule that if the purchase is not completed on the completion date then (subject to certain exemptions and alternatives) the purchaser shall pay interest on the remainder of his purchase money at 5 per cent. per annum less tax until actual completion. Two new exceptions are introduced to this condition, both of which are fair. The first (which corresponds to a rule applied in certain other standard conditions) provides that the purchaser shall not be liable to pay interest so long as delay in completion is attributable to any act or default of the vendor, or his mortgagee or Settled Land Act trustees. The second (which is an example of improved drafting to meet the needs of transactions of frequent occurrence) exempts the purchaser from the obligation to pay interest in a case where the property is to be constructed or converted by the vendor, so long as the construction or conversion is unfinished.

Once more we feel that, although the use of words such as "conversion" may give rise to doubts as to their meaning, in the vast majority of cases the introduction of conditions of this nature should be welcomed. A dispute in an occasional instance is a small price to pay for the advantage of a rule which will operate fairly almost invariably.

Disclosure of tenancies

The Special Conditions should be completed in such a manner as to state whether the sale is with vacant possession or subject to tenancies of which particulars are given. In the last edition, however, the general conditions stated that the property was sold subject (*inter alia*) to tenancies, whether mentioned in the Special Conditions or not. This provision is not repeated in the present edition and it is essential that all tenancies should be disclosed by the vendor.

Land tax

If that step has not previously been taken, land tax has to be redeemed by a purchaser (Finance Act, 1949, s. 40 (2)). On the other hand, in the event of the death of the vendor after contract but before completion, it would seem that liability to redeem arises first by reason of the death of the estate owner and so falls on the vendor's estate. This view was expressed in the First Supplement to Emmet on Title, 14th ed., vol. 1, in an *addendum* to p. 538, where the following comment was made : " This seems an unjust result, particularly if the liability to pay land tax was disclosed to the purchaser before contract. A special condition could be inserted in contracts throwing this obligation on purchasers if the risk were considered sufficiently material." Apparently the draftsman of the National Conditions agrees with this reasoning as Condition 14 (4) in the 17th ed. states, " in case the vendor dies before completion the purchaser will indemnify his personal representatives against any liability falling upon them in that event for the redemption of any land tax which, but for the death, the purchaser would have been liable to redeem."

Local land charges

The National Conditions, and other standard forms, require the vendor to indemnify the purchaser in respect of any matter which has been entered before the date of the contract in a register of local land charges, provided that it is such that it involves only the payment of money and can be caused to be removed by payment before completion. A new exception to this rule is introduced into the 17th ed. of the Conditions. That exception is of any matter disclosed to a purchaser by a certificate of search obtained by him before the signing of the contract. If the purchaser has not made a local search before contract then the obligation will remain with the vendor. On the other hand, if the purchaser does search and a monetary liability is disclosed, then no obligation of the vendor to indemnify the purchaser arises *by virtue of the Conditions of Sale.*

We are inclined to think that this new exception may cause some confusion. It seems that, even though the conditions do not expressly require the vendor to make indemnity, the purchaser will usually have a remedy. Many financial liabilities registrable in a local land charges register are charges on the property. In the absence of any relevant condition of sale the vendor must bear the expense of discharging any such charge which arises prior to the time fixed for completion (*Re Waterhouse's Contract* (1900), 44 Sol. J. 645). Similarly, where the obligation in question is not a charge on the property but is recoverable by action against the owner for the time being, the vendor must meet it if it falls due before completion date (*Egg* v. *Blayney* (1888), 21 Q.B.D. 107). A simple example, which arises frequently, is the imposition of the cost of making up a street under statutory powers, which normally becomes a charge when work is completed. Under an open contract, if the work was completed before the date of the contract, the vendor is liable for the cost (*Stock* v. *Meakin* [1899] 2 Ch. 496 ; [1900] 1 Ch. 683). Consequently, we think that, in general, even charges which are disclosed by a search certificate will remain the liability of the vendor. It is important, therefore, to note carefully any entries disclosed on a local search certificate obtained before contract. Even if the liability for their discharge is not thrown on the vendor by the express terms of the Conditions of Sale, it may exist independently, but very great care is needed to elucidate the position before a binding contract is executed.

Tax allowances

In commenting on the 16th ed. ((1953), 97 Sol. J. 579), we remarked that " an interesting omission is of the former rule that the vendor might be required to covenant to supply information for the purposes of any allowance or relief under the Income Tax Act, 1945, Pts. I and IV (which related to allowances and reliefs in respect of industrial buildings and agricultural land), or other like enactment." It has been decided to reinstate in a different form a condition of this nature. The vendor is now required *before or on completion* to furnish, or give authority for the Inspector of Taxes to make available, all relevant particulars of capital expenditure and of the cost of maintenance, repairs, insurance and management for the purpose of enabling the purchaser to claim allowances under the Income Tax Act, 1952, or any other fiscal enactment.

Summary

There is not likely to be a great deal of controversy about the changes made in the National Conditions. The provision of standard rules for sales by way of grant of a new lease or underlease at a premium and for contracts which are (in substance, and now in form also) conditional on the purchaser being able to obtain a substantial mortgage is likely to be welcomed. The other amendments, several of which materially change the rights of parties to contracts, seem well conceived and to be based on practical experience. It is reasonable to anticipate, therefore, that the new edition will prove to be satisfactory for an appreciable number of years.

(Concluded) J. G. S.

"THE SOLICITORS' JOURNAL," 4th JUNE, 1859

On the 4th June, 1859, a correspondent recorded in The Solicitors' Journal his experiences in the articled clerks' examination : " I went to the last examination as to a pleasant day's work, and having heard of candidates leaving at 1.30, I took time and drafted most of the common law answers, but found it past 1.00 before I had finished the first division. I hastened over conveyancing and hurried over equity and bankruptcy—reading a question and writing the answer *instanter*—and finished at 4.55 having omitted three answers in the four first divisions and left criminal law untouched. It is clear to me that cramming enables a man to answer more readily than real reading and I was glib enough at little matters got up for the occasion ; but in questions that I knew most about I felt that I must not write a pamphlet and yet the requisition to give reasons for my answers puzzled me exceedingly. Fancy explaining the doctrine of reputed ownership in bankruptcy and then explaining the reasons ! —I left that blank for want of time. Or stating some of the defences which a defendant may plead together without leave ! I knew there were 17 but it took me 10 minutes at least to recollect 16 and the seventeenth occurred to me next morning . . . Or defining estates tail, etc., and giving reasons for the common law and statute *De Donis* down to the Fine and Recoveries Abolition Act ! Pray, sir, is it easy to select from 50 equally cogent reasons in five minutes ? It's like tossing a man into the sea that he may drink quickly. I would suggest . . . that the examination should occupy two days—half of each division for each day . . . As to the over-severity of the examination, I cannot see it ; but I believe if all mutual assistance among the candidates were to cease, the number of postponed would be doubled. I don't complain of the examination ; but I think it would be an improvement if the time were doubled, especially for those who, like myself, write a slow hand. As it was, my difficulty was the hurry, and I did not feel satisfied with what I had done."

Landlord and Tenant Notebook

LANDLORD NOT "READY AND WILLING" TO DO REPAIRS

WHEN a question arises whether landlord or tenant should accept responsibility for upkeep, rent to be so much in the one case and so much less in the other, it may seem at first sight that, assuming that the difference between the two figures is fairly arrived at, it will not matter who undertakes repairs. But readers who have been consulted by tenant covenantees whose landlords fail to carry out their obligations will recall that it is usually far more difficult to give them satisfactory advice than it is to tell a covenantee landlord what he can do.

For this reason a set of seven propositions, to be found in the judgment of Jenkins, L.J., in *Granada Theatres, Ltd.* v. *Freehold Investments (Leytonstone), Ltd.* [1959] 1 W.L.R. 570 (C.A.); p. 392, *ante*—some of them, in my submission, novel—is welcome.

The dispute in this case arose out of "a singularly awkward piece of drafting," as Vaisey, J., put it at first instance (see 102 SOL. J. 556), by which landlord and tenant shared responsibility for upkeep of parts of a cinema, and one of the main issues was whether repairs to the roof were what the lease called "structural repairs of a substantial nature" and the landlords' responsibility. On this point, the Court of Appeal agreed with Vaisey, J., that they were; and as instruments of the kind must be uncommon, I do not propose to revert to the subject, but will rather discuss at some length the question "what can a tenant do when his landlord fails to repair in accordance with covenants." My observations will not, however, cover the peculiar position of rent-controlled premises.

The important facts for present purposes were that the tenants notified the landlords of the disrepair on 31st January, sending a schedule of dilapidations. After considerable argument on the question who was liable for what, the tenants asked for a specification of what the landlords proposed to do. The request was refused and the landlord sent some men along on 19th November. The tenants ordered the men off and later did repairs themselves. They claimed the cost of the work.

To repair on notice

The first of Jenkins, L.J.'s propositions was that a landlord's covenant to repair is a covenant to repair on notice. No one will quarrel with the statement that this is well settled. It has been settled by a number of decisions—and so have certain exceptions; perhaps one point which may some day give rise to difficulty is whether the notice must emanate from the tenant or whether liability would commence if, say, he were away on holiday, but the landlord read a newspaper report of a storm mentioning that all the roofs in a certain road, the address of the demised premises, had been damaged. A *dictum* of Warrington, J., in *Torrens* v. *Walker* [1906] 2 Ch. 166 suggested that it would not commence.

Implied licence

The next proposition, that the landlord has an implied licence to enter for the purpose of performing his covenant, was also described as well settled. *Saner* v. *Bilton* (1878), 7 Ch. D. 815, was referred to; in that case it was in fact not so much the entry as the time taken to effect repairs that the tenant complained of.

A continuing obligation

Jenkins, L.J., next observed that, where the covenant is to *keep* in repair, failure to perform it after notice constitutes a continuing breach in respect of which a fresh cause of action arises from day to day as long as the requisite repairs remain undone.

The continuing nature of the obligation is, of course, well established, and the proposition was no doubt stated because of the length of time spent in negotiations in the particular case. But the "remain undone" suggests a point. Liability commences when the landlord is notified; does it cease as soon as he attends to the repairs or when he has completed them, and, if the former, as soon as he sets about the task (e.g., by surveying, instructing builders, etc.) or when the work actually commences?

Tenant doing repairs

The next two propositions can conveniently be discussed together. They are: In the event of the landlord failing to do the requisite repairs within a reasonable time after notice, the tenant is entitled to sue him in damages without first incurring expense by doing repairs himself; and: The covenant is clearly not specifically enforceable, "but I apprehend that, in the event of the landlord failing to do the repairs in a reasonable time, the tenant can, *at his option*, do the requisite repairs himself and claim the proper cost of so doing as damages flowing from the breach."

In support of the first of these propositions, the learned lord justice cited *Hewitt* v. *Rowlands* (1924), 131 L.T. 757 (C.A.). The effect of that decision is not usually so stated, but the facts may be said to warrant the proposition. The litigation arose out of the failure of a landlord of a rent-controlled cottage to keep it dry and the outside in repair, in accordance with a term in a five-year agreement made in 1875, since followed by a yearly tenancy created by holding over and then by a statutory tenancy. The decision is usually cited as authority for the proposition that the measure of damages in a tenant's claim is at the date of assessment the difference between the value to the tenant of the premises in their actual condition and their value if the landlord had fulfilled his obligation on receiving notice of the disrepair (the "to the tenant" is, of course, important in rent control cases). But the reason why the case got to the Court of Appeal was that a district registrar had rejected the claim for disrepair (while allowing damages for injury to furniture, etc.) on the reasoning that the tenant had not incurred any expenditure in effecting repairs. The decision thus warrants the proposition that a tenant "need not" do any repairs in such cases. It was not actually said that if the tenant had done repairs he might have claimed the cost, but neither was it said that he could not have taken that course; to that extent Jenkins, L.J.'s "I apprehend that . . . the tenant can, at his option, do the requisite repairs himself . . ." may be said to break new ground.

Right of entry

In his sixth proposition, the learned lord justice reverted to the *Saner* v. *Bilton* established right of entry. Denial of that would disentitle the tenant to sue for damages as long as refusal was persisted in because the landlord would not

be in breach of covenants or, at all events, would only be put in breach of it by the tenant's own conduct. Again, the conclusion is prefaced by " I apprehend," no authority being cited.

To act reasonably

The seventh and final proposition is this: " The parties are under a duty to each other to act reasonably. It behoves the landlord, who is in breach of his covenant, to be diligent in remedying such breach. He is not entitled to keep the tenant waiting indefinitely and then complain if the tenant ultimately decides to do the work himself. On the other hand, he must be reasonable in the exercise of his licence to enter and (as I think) give the tenant sufficient notice of his intention to enter, and information as to the nature and extent of the work he proposes to carry out. On his part, the tenant must not unreasonably obstruct the landlord in the exercise of his right of entry for the purpose of doing the work, or take the matter out of the landlord's hands by doing the work himself before the landlord has had a reasonable opportunity of doing so."

In the event, while Jenkins, L.J.'s brethren accepted the seven propositions, he alone considered that the landlords in the case before the court had acted unreasonably and more unreasonably than the tenants; they had been asked for more information than they were obliged to give about what they proposed to do, but had been guilty of inordinate delay and undue reticence. Romer and Ormerod, L.JJ., however, considered that the landlords had shown themselves ready and willing, the only question being whether what they had said they would do would have satisfied their obligations under the covenant, and the case was remitted for a finding which would answer that question.

Mitigation of damages

Jenkins, L.J.'s occasional " I apprehend " and " as I think " do not, of course, imply any diffidence; and if authority were to be sought for those statements where none is cited, it could, in my submission, be found in the law relating to damages. That the plaintiff is under a duty to take all reasonable steps to mitigate the loss consequent on the defendant's wrong is well established; indeed, it is a corollary of the " such as may fairly and reasonably be considered arising naturally, i.e., from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties " principle of *Hadley* v. *Baxendale* (1854), 9 Exch. 341. And if the numerous illustrations do not include any in which a tenant under a landlord's repairing covenant has been the plaintiff, it is probably because such an aggrieved party is more likely to take all reasonable steps to mitigate the loss. Unlike the merchant, he may literally be personally affected; if rain comes through the roof, he will shift his bed or his chair and perhaps apply a tarpaulin without consulting his solicitor or referring to Mayne on Damages. Nor is it likely that he will obstruct the landlord in the exercise of his right of entry.

Covenantee doing the work

The landlord is not, according to the above-mentioned seventh proposition, entitled to complain if he keeps the tenant waiting indefinitely and the tenant ultimately decides to do the work himself. In the case before the court, what the tenants claimed (in addition to a declaration) was the cost of the work, and Jenkins, L.J., was in fact in favour of making the reasonable cost of the work the measure of damages, an allowance being made for anything the landlords had done before their men were ordered off the premises. I will conclude with a short reference to older cases in which the effect of doing the work, or of not doing it, has been considered in very different circumstances.

Some three years after the defeat of the Great Armada, an action for rent, *Taylor* v. *Beal* (1591), Crox. Eliz. 222, was brought in the Court of Queen's Bench. The defence was that the tenant had spent the money on repairs which the landlord had undertaken to do. Of the three judges sitting, Gawdy, J., held that this was a valid answer: " The law giveth this liberty to the lessee to expend the rent in reparations, for he shall be otherwise at great mischief, for the house may fall upon his head before it shall be repaired." One of the others disagreed, holding that the tenant was limited to an action on the covenant; the third considered the argument sound, but held that the point ought to have been pleaded. The decision has, as far as I know, never been queried, and the argument might not prevail where there was a " without deduction " reddendum, but the principle has been applied in unreported county court cases!

Coward v. *Gregory* (1866), L.R. 2 C.P. 153, presented the judges of the Court of Common Pleas with a troublesome point. During the term of a lease obliging the landlord to put premises into repair and to keep them in repair, the tenant had brought an action and had recovered damages for breaches of the covenants in question. A similar action was now brought by the assignee in bankruptcy of the tenant against the lessor's successor in title, who pleaded, *inter alia*, that the tenant had not expended the sums recovered in repairing the premises, the alleged breach consequently being due to the tenant's default. The court was somewhat puzzled, there being no precedent for such a situation; but came to the conclusion that the claim was not barred, the events being a matter for mitigation of damages.

R. B.

Honours and Appointments

Mr. CHARLES GEORGE CHURCHER has been appointed Assistant Official Receiver for the Bankruptcy District of the County Courts of Croydon, Guildford, Kingston-upon-Thames, Slough and Wandsworth, also for the Bankruptcy District of the County Courts of Aylesbury, Banbury, Brentford, Chelmsford, Edmonton, Hertford, Newbury, Oxford, Reading, St. Albans and Southend.

Councillor R. H. BRYANT, solicitor, St. Leonards-on-Sea, has been elected Mayor of Hastings for the second year in succession.

Mr. J. A. G. GRIFFITH, now Reader of English Law, is to be Professor of English Law in the University of London.

Mr. JOHN FRANCIS HIPWOOD has been appointed Registrar of Lincoln and Horncastle, Gainsborough, Grantham and Newark County Courts and District Registrar in the District Registry of the High Court of Justice in Lincoln in succession to Mr. J. H. Taylor, who has resigned.

Mr. RONALD REES, solicitor, who has been blind since the age of sixteen, was elected chairman of Frimley and Camberley Urban District Council on 26th May.

Dr. S. A. DE SMITH has been appointed to the Chair of Public Law in the University of London.

Master G. S. A. WHEATCROFT, Master of the Supreme Court (Chancery Division), has been appointed to the Chair of English Law at the London School of Economics (University of London); accordingly he will relinquish his appointment as a Chancery Master on 30th September (see also Current Topic at p. 438, *ante*).

THE SIX MONTHS LIMIT

THE general limit of six months for the institution of summary proceedings is now acquiring a special significance when, owing to the greatly increased number of cases, the time between the date of the offence, the laying of the information and the hearing of the summons is becoming so much longer. In addition to this, the intricacies of the Magistrates' Courts Act, 1952, have to be borne in mind. Section 15 (3) of the Act provides that " Where a summons has been issued, the court shall not begin to try the information in the absence of the accused or issue a warrant under this section unless . . . it is proved to the satisfaction of the court . . . that the summons was served on the accused . . ." This may be contrasted with s. 1 (3) of the Act, which states : " Where the offence charged is an indictable offence, a warrant under this section may be issued at any time notwithstanding that a summons has previously been issued." Some courts have interpreted these two sections to mean that if proceedings for a summary offence are begun by summons and the summons is not served, the prosecution cannot then have recourse to a warrant. They argue that the implication of s. 1 (3) is that warrants are reserved for the more serious indictable offences and not for summary offences unless they are begun by warrant. This view is probably incorrect. The object of s. 1 (3) is to prevent the six months limitation for summary offences applying to indictable offences. Bearing in mind the large number of summary offences for which imprisonment can be imposed for periods up to six and even twelve months, it is difficult to believe that Parliament ever intended such an interpretation to be placed on these two subsections. The better opinion would appear to be that, if a summons is not served, the prosecutor can apply for a warrant pursuant to s. 1 (1) of the Act, but for this he must swear a written information. More important still, the information must be sworn within the six months limitation. The information for the summons may have been made several months before, and a great deal of time may have been already lost in trying effectively to serve the summons. The combined effect of r. 76 of the Magistrates' Courts Rules, 1952, and r. 3 of the Magistrates' Courts Rules, 1957, is that a summons cannot be treated as served if it is sent by post or is left at the defendant's last place of abode and he gives no indication that the summons has come to his notice. At this point two courses are open. Another summons may be granted in the hope that it can be served personally. Alternatively, a warrant can be issued and if it is thought that the defendant is deliberately evading service in the hope that eventually the proceedings will be out of time, there would be every justification for taking this course, particularly as the warrant can be backed for bail to allow the defendant to be released from a police station. Recently a summons was taken out against a motorist for obstruction. The defendant had been convicted of nine similar offences and all attempts to serve him with the tenth had failed. In the end the six months had elapsed and nothing further could be done. An offender even for comparatively trivial offences such as this ought not to escape by the simple expedient of imitating Brer Rabbit and " sayin' nuthin'."

F. T. G.

HERE AND THERE

THE OLD SHOP

I MET him at supper in a fish and chip shop in an alley in a small Home Counties town. The house itself is old, low-built and particularly agreeable. The ceilings are not too high ; the windows are not too large ; it opens on to a quiet footway instead of on to a roaring street. Its structure embodies the personalities of the human beings who built it and the many human beings who, in the passing centuries, have adapted it to their needs. Therefore, any official surveyor proficient in what one may call (for want of a worse word) the business of government would have not the slightest difficulty in finding a dozen plausible reasons for declaring it unfit for human habitation or use. If it were deemed expedient to demolish it in pursuance of some " slum " clearance scheme the compensation payable could hardly (on current precedents) amount to more than 23s. 6d., less expenses, since it has none of that mass-produced anonymity arbitrarily embodying an abstract mathematical formula applied on a drawing-board, now so widely admired in local government circles. Nor could it clutch the *tabula in naufragio* of being " a building of outstanding historical interest." It is just a very pleasant irregular old house which fulfils its function admirably and fits with well-mannered unobtrusiveness into the undeveloped centre of the old town. Even the recent ill-advised intrusion of an enormous great shiny new counter-cum-frying-machine in the shop and shiny black tables instead of the nice old plain ones in the restaurant room has not destroyed the charm of the place.

LOCAL HISTORIAN

THE stranger I met in this place was rustic but striking in appearance, with flowing white hair and moustache and a country complexion and, despite his years, vigorous. He remarked how long ago he had spent many days in that house transcribing the parish records. It was then a public house (he named it, as it then was) and the landlord was the verger of the parish church. I mentioned the monumental local history which had been written some years back by the saddler whose shop was just round the corner, and, seeing that I was interested in the traditions of the place, he started recalling things he had heard from old men in his younger days. The centre of the town used to be called Gaol Green (instead of the fancy name it now goes by) because the county gaol used to stand where the bus office is now, and the debtors used to stand at a window and ring a little bell to attract the attention of passers-by who might drop an alms into a mug dangled on a string. He produced a volume published by the Records Society of those parts and among the council I noticed a familiar legal name. Was he the barrister of Lincoln's Inn ? I asked. Yes, he was, said the stranger, who showed himself familiar not only with the county history but with the London legal world and the Inns of Court.

COUNTRY SCHOLARS

I WAS puzzled to place him until, as we were waiting for the buses for our respective villages, he told me he was a retired solicitor. When he was just growing up his father had asked him what he wanted to do in life ; if he wanted to make a

lot of money he must keep out of the professions and go in for commerce; his father had the means to place him in a big commercial house in the City. No, said the boy, he would rather do work that he could really take an interest in and so he became a solicitor. " I was mad about conveyancing," he told me. " I still am." He was of a type fast disappearing, at any rate within hailing distance of the sophisticated metropolis, the old-fashioned professional man learned and well read but with his roots in the soil and not disdaining a hint of local dialect in his speech. Another of the race was old A. W. Chaster, long a familiar figure in Lincoln's Inn and who died just after the end of the War (I think). When he was over eighty he could still drive his 1920 Humber between London and his home in Totnes. Short, wiry, with a long wispy moustache, he spoke in a broad Devon accent. His middle-aged housekeeper, who had looked after him for over twenty years, was still to him " the girl." He knew Spanish, French, Italian and German and was well read in those languages. He was a musician who could render Beethoven vigorously on his grand piano. He could imitate Disraeli whom he had heard in the House of Lords. But all the time his roots, as well as his accent, belonged to Devon. Perhaps, away from the standardising influences of London and its environs, there are more of these men than we think. I hope so.

RICHARD ROE.

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED

ANNUAL REPORT

THE seventieth annual general meeting of the Society was held at Oyez House, Breams Buildings, Fetter Lane, on Tuesday, 26th May, Mr. K. D. Cole in the chair.

The chairman's statement circulated with the report and accounts said :—

" The report which I have to submit to you is a satisfactory and encouraging one. In the last four months of the year we were particularly busy, and the year's increase in sales was higher, in both percentage and amount, than in either of the two previous years.

Death of Sir Alan Gillett.—The shareholders will have learned with regret of the death of Sir Alan Gillett on 18th February, 1959. Sir Alan joined the Board in 1929. He became chairman in 1945 and filled that office for six very important years, during which his energetic leadership and foresight were of inestimable value in dealing with the period of post-war reconstruction. He played a great part in the work which led to the building of the new Oyez House and it was appropriate that in 1951 he laid the foundation stone. In 1952 he resigned the chairmanship owing to ill-health, but we were fortunate in that he was able to remain on the Board, where his knowledge, experience and judgment were of great value to us.

Profit and dividend.—The increase in profit has enabled the directors to recommend a final dividend of 9 per cent., less income tax, making a total of 12 per cent. for the year, against a dividend of 9 per cent. for 1957. The higher turnover, coupled with a small increase in our profit margins, has more than off-set the increase in departmental and group expenses, arising largely from the higher rents and service charges incurred during the year by the occupation of Oyez House.

Rebuilding reserve.—This reserve has been debited with the additional cost of the building which was incurred as a result of its erection in two stages (£11,766) and the extra cost of the foundations of the south block arising from the presence of water on the site (£15,777), in addition to the costs incidental to the removal of departments into the new building. The balance in the reserve is being retained to meet future liabilities in connection with our properties.

Purchase tax.—The reserve provided against loss on the removal or reduction of purchase tax now stands at a figure rather above the total tax on our stocks at the end of the year. It is proposed to extend the original purpose of this reserve to include any decrease in the book value of our motor vehicles arising from a reduction in the rate of tax; the proposed addition of £2,500 will be adequate to enable it to meet this extension.

Oyez House.—The transfer of all the departments to be accommodated in the new building was successfully completed in June. The increased space and better layout have already enabled the departments housed there to improve their service to customers and to handle a larger volume of orders with greater efficiency. The benefit will be experienced fully in the current year.

Accountancy changes.—Although the change in our methods took longer to get running smoothly and cost more than had been expected, the annual saving has justified the expenditure incurred. Apart from the capital cost of the equipment, which will be depreciated in the normal way, the initial expenditure in connection with the change has been met out of revenue by the end of 1958. Outstanding book debts were substantially reduced during the year and a further reduction is expected this year.

Sales development.—In order to make the maximum use of our increased facilities, special attention has been given during the year to the promotion of sales, both in connection with our traditional services to the profession and also in directions which can reasonably be developed in conjunction with them. A showroom for the display of office furniture and equipment has been provided in Oyez House and shareholders are particularly invited to visit it.

New Bootle works.—As a result of a compulsory purchase order, we are having to vacate our Manchester works premises, and a new printing works is in the course of erection on a freehold site which we have acquired at Netherton, near Bootle. The building will provide modern accommodation for the printing staff and plant now housed at Manchester, and also for our present Liverpool works, for which the North John Street premises are no longer suitable. Additions will be made as required and the site will permit the initial production area of 12,000 square feet to be doubled when needed.

Manufactured stationery.—A satisfactory feature of recent years has been the steady increase in the sale of manufactured stationery, produced mainly in our London works. The past year showed a further marked increase in the volume of sales of parchment paper, ruled papers, loose-leaf sheets and notebooks of many kinds. Our parchment paper is still made by hand and we are probably the largest purchaser of hand-made paper in the world.

Copying of documents.—Further improvements have been made in the equipment of our copying departments both in London and in the provinces, by the introduction of an increasing number of electric typewriters, many of them fitted with modern type faces, and by the addition of improved duplicators and photocopying machines. These departments show a satisfactory increase in their sales.

Publishing and periodical department.—Towards the end of the year, Mr. N. D. Vandyk, a solicitor, was appointed assistant editor of THE SOLICITORS' JOURNAL and RATING AND INCOME TAX. This appointment will enable our managing editor, Mr. A. C. Monahan, to devote a greater proportion of his time to the development of practice books for solicitors and, in the long term, increase the output of our publishing department.

Government sales department.—As the nature and size of the orders received were such that it was impossible to handle them profitably, it was decided to close this department at the end of August, although orders for specific Government publications will continue to be executed.

Staff.—The results which we are able to put forward reflect the greatest credit on Mr. Holroyde and the staff. They have faced many difficulties during the year and I should like to convey to them the thanks of the Board and the shareholders for all they have done and the cheerful way in which they have done it.

The current year.—The first quarter of this year has shown a continuation of the satisfactory trading during the last quarter of 1958, and we face the future with confidence."

The report and accounts were unanimously approved, and Mr. Kenneth Davey Cole, retiring by rotation, and Sir Charles Ian Russell, retiring under the Articles, were re-elected.

The remuneration of the auditors was fixed for the ensuing year.

The meeting terminated with a vote of thanks to the directors.

REVIEWS

The Law of Agricultural Holdings. Third Edition. By W. S. SCAMMELL, C.B.E., M.C., LL.B. (Lond.), Solicitor. pp. xxxiii and (with Index) 738. 1959. London: Butterworth & Co. (Publishers), Ltd. £2 15s. net.

The third edition of this work, like the earlier editions, consists of an exhaustive survey of the legislation concerned, section by section, and of a number of useful Forms and Precedents. Comprehensive is, we think, a fair description of the result.

One might, perhaps, go further, and say that when examining the effect of a particular provision, the author often considers situations in which attention might have to be paid to the practical effect of the legislation, as when he points out that, because of the possibility of relief, forfeiture may be a less satisfactory remedy than a notice to quit based on bad husbandry. He also visualises situations which might give rise to questions of interpretation, discussing the relevant points of view with care; and though occasionally this may mean raising a giant with the intention of slaying him, and on some occasions the giant is hardly a viable one (as when he suggests that someone might argue that an abatement of rent by reason of damage by fire was a " reduction of rent " for the time limit purposes of the Agricultural Holdings Act, 1948, s. 8—arbitration as to rent), many a practitioner will be grateful for the suggestions and ideas offered and propounded. What he has to say, for instance, about the value to a tenant of a record of the holding contains advice which would not readily occur to many of us; and it may well be that we benefit by the fact that Mr. Scammell's qualifications include that of a past associate member of the Council of the Royal Institution of Chartered Surveyors.

There is just one criticism which is, the reviewer hopes, not too trivial. The comparative merits and demerits of giving references to authorities when citing them and of giving them in the table of cases only may be arguable; but when the authority of a decision may depend not only on what court decided it but on who reported it, or on whether it has been reported, the reader, out to assess the weight of authority for or against what he may have to argue, would welcome some information on these points in the text. Sometimes this is available, as in the case of *Chatswood Safe and Engineering Co., Ltd.* v. *Frank;* but on other occasions it is disconcerting to find that a decision referred to as " particularly helpful," namely *Peach* v. *Partridge*, is " unreported," the source of the information not even mentioned.

Unit Trusts and How they Work. Second Edition. By C. O. MERRIMAN, A.C.A. pp. x and (with Index) 123. 1959. London: Sir Isaac Pitman & Sons, Ltd. £2 net.

Only perhaps one solicitor in 1,000 *must* read this book, but many more will find the task rewarding. Despite the title, this is not a " popular " attempt to make things easy for the potential investor or his adviser. This is apparent as early as the second paragraph in the book; the author loses no time in immersing the reader in his subject. Nevertheless, the persevering reader will ultimately gain in confidence when having to advise a client contemplating an investment in one or other of the various forms of unit trusts. Admirers of Mr. Weller in Pickwick will recall the accomplishment of the charity boy in relation to the alphabet; but this reviewer, at any rate, feels that the effort was worth it.

Agriculture (Safety, Health and Welfare). Being a reprint of Butterworth's Annotated Legislation Service Statutes Supplement No. 113. By IAN FIFE, M.C., T.D., of the Inner Temple and the Oxford Circuit, Barrister-at-Law, and E. ANTHONY MACHIN, B.C.L., M.A., of Lincoln's Inn and the South-Eastern Circuit, Barrister-at-Law. pp. x and (with Index) 83. 1959. London: Butterworth & Co. (Publishers), Ltd. £1 net.

" Grandmotherly " is a favourite description of any legislation modifying the relationship of master and man. Parents, as well as grandparents, may now take note that failure to wash one's face is, in certain circumstances, a punishable offence. See reg. 8 (1) (*d*) of the Agriculture (Poisonous Substances) Regulations, 1956. These and other regulations and statutes are tidily gathered together in this useful little volume.

Factory Acts, by that and other names, are now to be applied more and more stringently to agriculture; and in an industry not as yet notable for its zeal in regard to accident prevention, so-called grandmotherly legislation seems bound to gain in importance.

The statutes and statutory instruments are reprinted with annotations. The authors also attempt a classification of the various statutory duties breaches of which do (or do not) give rise to civil actions for damages. For any solicitor with farmers among his clients, the obvious place for this volume is on the same shelf as " Stone."

CORRIGENDUM

Law of Property in Land. By the late H. GIBSON RIVINGTON, M.A. (Oxon), Solicitor. Fifth Edition.

The last part of the first sentence in the last paragraph of the review published at p. 428, *ante*, reading " an allusion to the authorities examined in that case," should have read, " an allusion to the authorities examined in *Official Trustee of Charity Lands* v. *Ferriman Trust, Ltd.* [1937] 3 All E.R. 85; see also *Richmond* v. *McGann.*"

BOOKS RECEIVED

From Precedent to Precedent. The Romanes Lecture delivered in the Sheldonian Theatre on 21st May, 1959, by the Rt. Hon. LORD DENNING OF WHITCHURCH. pp. 34. 1959. Oxford: Clarendon Press: Oxford University Press. 2s. 6d. net.

International Lawyers Convention in Israel, 1958. pp. xi and 360. 1959. Jerusalem, Israel. (No price stated.)

Oyez Practice Notes No. 3: Adoption of Children. Fifth Edition. By J. F. JOSLING, Solicitor. pp. (with Index) 128. 1959. London: The Solicitors' Law Stationery Society, Ltd. 17s. 6d. net.

Law and Opinion in England in the Twentieth Century. Edited by MORRIS GINSBERG. pp. viii and (with Index) 407. 1959. London: Stevens & Sons, Ltd. £2 2s. net.

Legal Penalties. The Need for Revaluation. A report by *Justice*. Chairman: Sir DAVID CAIRNS, Q.C. pp. v and 18. 1959. London: Stevens & Sons, Ltd. 3s. 6d. net.

Police Law. An arrangement of Law and Regulations for the use of Police Officers. Fifteenth Edition. By the late CECIL C. H. MORIARTY, C.B.E., LL.D., and W. J. WILLIAMS, O.B.E., B.Sc., LL.B. pp. xx and (with Index) 623. 1959. London: Butterworth & Co. (Publishers), Ltd. 15s. 6d. net.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

House of Lords

CERTIORARI: PAYMENTS APPEAL TRIBUNAL: JURISDICTION

Baldwin & Francis, Ltd. *v.* Patents Appeal Tribunal

Lord Morton of Henryton, Lord Reid, Lord Tucker, Lord Somervell of Harrow and Lord Denning. 14th May, 1959

Appeal from the Court of Appeal [1959] 1 Q.B. 105; 102 SOL. J. 438.

A company made application for a patent whereupon, on the publication of its specification, the owners of a prior patent opposed the grant of the patent applied for on the grounds, *inter alia*, that its specification could not fairly describe the invention or the method by which it was to be performed without referring to their prior patent and that such a reference should be directed under s. 9 of the Act. Both the patent applied for and the prior patent concerned improvements designed to prevent the re-closing of an electric circuit in which an earth fault had developed until that fault was repaired. Subsequently, on investigation by the superintending examiner on behalf of the comptroller, it was decided that the later invention could not be performed without substantial risk of infringement of the prior patent, and, accordingly, there being no proposals for amending its specification, by a final decision dated 31st August, 1956, the superintending examiner ordered that the patent applied for be sealed with a reference to the prior patent. On appeal to the Patents Appeal Tribunal, the tribunal reversed that decision. The owners of the prior patent (the appellants) being dissatisfied with the tribunal's decision, from which there was no appeal, applied to the Divisional Court for an order of certiorari on the ground that there was an error of law appearing on the face of the record in that the tribunal had misconstrued the rival specifications, or one of them. The Divisional Court refused the application. The appellants appealed unsuccessfully to the Court of Appeal and now appealed to the House of Lords.

LORD MORTON OF HENRYTON said that the effect of ss. 9 (3), 14 (4), 84 and 85 of the Patents Act, 1947, was that no appeal lay to the Court of Appeal from a decision of the Patents Appeal Tribunal in the present proceedings, that the tribunal was an inferior tribunal and that the only remedy of persons aggrieved by a decision of the tribunal was by way of an order of certiorari. In the Court of Appeal the appellants' argument was that before the tribunal could decide whether there was a substantial risk of infringement, it must construe the relevant specifications; the construction of a written document was a matter of law; reading the tribunal's decision, it was clear that it had misconstrued the specifications; accordingly there was an error of law on the face of the record. Parker, L.J. (with whom the other lords justices concurred), said that where technical words were used in a document evidence could, and indeed must, be given to enable the court to understand their meaning; the court could not construe the specification without being informed by evidence and, that being so, the application failed *in limine* because the court was not entitled to look at the evidence given in the proceedings or to receive new evidence on affidavit. He (Lord Morton) agreed that where certiorari was sought the court might not look at the evidence given or receive new evidence. There were, however, other means of ascertaining the meaning of technical words. Here the House had been much assisted by an analysis of claim 1 of the appellants' specification, prepared by the appellants and accepted as correct by the respondents. It would be regrettable if the courts were precluded from considering whether there was an error of law on the face of the record because they did not know the meaning of certain technical terms. The appellants submitted that the record included at least the decision of the superintending examiner, the notice of appeal to the appeal tribunal, the decision of the appeal tribunal and the two relevant specifications. Even assuming that they all formed part of the record, there was here no error of law on the face of the record. The appellants relied on a statement in the decision of the tribunal as showing that it must have forgotten the tenor of the argument addressed to it and must have omitted to notice that claim 1 of the appellants' specification included alternative D, so that an error of law was revealed. But it did not appear *on the face of the record* that the tribunal ever heard any argument on this point and the omission of any reference to alternative D might be due to the fact that the tribunal did not consider that there was any substantial risk of infringement of that alternative. If the present proceedings had been an appeal from the tribunal's decision, it would have been the duty of the House to hear argument and evidence directed to the question whether there would or would not have been any substantial risk of infringement of alternative D, but the Legislature had not given a right of appeal in this case and the tribunal's omission to deal with the question just stated did not amount to an error in law on the face of the record. The appeal should be dismissed with costs.

The other noble and learned lords agreed that the appeal should be dismissed. Appeal dismissed.

APPEARANCES: *Patrick Graham*, Q.C., *Anthony Cripps*, Q.C., and *Mervyn Heald* (*Parker, Garrett & Co.*, for *Benson, Burdekin & Co.*, Sheffield); *Tookey*, Q.C., *S. I. Levy*, Q.C., and *John Hall* (*Bristows, Cooke & Carpmael*).

Reported by F. H. COWPER, Esq., Barrister-at-Law] [2 W.L.R. 826

Court of Appeal

PRACTICE: APPEAL FROM COUNTY COURT: COUNSEL'S NOTE OF JUDGMENT NOT SUBMITTED TO JUDGE

Bruen *v.* Bruce and Another

Hodson and Morris, L.JJ., and Pilcher, J. 28th April, 1959

At the hearing of an appeal from a county court judge there were produced the judge's note of evidence, signed by him, and a note of the judgment which had been compiled by and agreed between counsel on either side, but by inadvertence had not been submitted to the judge.

HODSON, L.J. (at the conclusion of his judgment): I desire to say a word on another matter which has arisen in this case. There was no note of the judge's reasons for his decision and, as is common practice, counsel's note was written out and agreed with the other side. But unfortunately it was not submitted to the judge, to give him an opportunity of checking it, before the appeal came on for hearing. I desire to draw attention to the terms of R.S.C., Ord. 58, r. 18 (5)—which this court has previously done in *Hayman* v. *Rowlands* [1957] 1 W.L.R. 317. It is, I think, convenient, where there are only notes of evidence and no notes of the judge's judgment, except a very brief one, that counsel's note should be available; but the correct practice is that that should only be used after it has been submitted to the judge. The judge not having had the document submitted to him for approval, this court had to decide what course it should take, and we decided to hear the appeal. But if this court had been in favour of the appellant's argument we said at the outset that we should not give judgment in a final form until the county court judge had had an opportunity of seeing the judgment which was being criticised in this court. The appeal having failed, no further question arises.

APPEARANCES: *Ian Percival* and *David Wild* (*T. D. Jones & Co.*, for *Tearle and Herbert Jones*, Luton); *Michael Hoare* (*Machin & Co.*)

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 684

Chancery Division

INCOME TAX: EMPLOYEE'S OPTION TO PURCHASE SHARES: WHETHER TAXABLE AS INCOME IN YEAR OF PURCHASE

Abbott *v.* Philbin (Inspector of Taxes)

Roxburgh, J. 19th March, 1959

Case stated by the Income Tax Commissioners.

In October, 1954, the appellant, who was at all material times secretary of a company, was granted an option to purchase 2,000

ordinary shares in the company at the price of 68s. 6d. per share. The price of the option was £20, and it was expressed to be non-transferable and to expire after ten years or on the earlier death or retirement of the appellant. In March, 1956, when the market price of the shares was 82s. per share, the appellant exercised the option in respect of 250 shares. The appellant appealed to the Commissioners against an assessment to income tax under Sched. E of the Income Tax Act, 1952, in the year 1955–56 on the difference between the option price and the market price of the shares (with a deduction of a proportionate part of the cost of the option), as being an emolument received by him by virtue of his employment, his contention being that the assessment should have been made in the year 1954–55. The Commissioners, considering themselves bound by *Forbes' Executors* v. *Inland Revenue Commissioners* (1959), 38 T.C. 12, dismissed the appeal. The appellant appealed.

ROXBURGH, J., said that the emolument was a perquisite. Rule 1 of the rules applicable to Sched. E grouped together a number of transactions, but that did not mean that they had essentially the same characteristics. The argument for the Crown rested mainly on passages in the judgments in *Bridges* v. *Bearsley* [1957] 1 W.L.R. 59, 674, but that case was distinguishable in that, first, this was not an option case at all, secondly, that case related to a payment under a contract of service and not to a payment which came as a result of service, and, thirdly, this case was concerned not with a reward for services but with a thing that was bought. Salaries were plainly revenue items; option contracts bought for valuable consideration were clearly, in the ordinary sense of the word, capital transactions. The court had to look at the nature of the perquisite by applying the ordinary principles of English law and his lordship had come to the conclusion that this was the sort of transaction which ought to be capitalised and taxed on the basis of a chose in action. It seemed to his lordship that *Forbes'* case was a case of additional remuneration and that the *ratio decidendi* of that case was a conclusion reached upon the construction of the contract. The option contract in this case was not to be assimilated to and was not additional remuneration, but it was a chose in action which the appellant was enabled to purchase because of his employment on beneficial terms and was a perquisite which could have been turned to pecuniary account. The appellant could have realised a profit on the shares very soon after the grant of the option and it must follow that the chose in action was a perquisite received in the tax year 1954–55, and, as it consisted of the benefit of the contract to have allotments of shares on certain terms the shares, when allotted, could not be taxed in another year as a new or different perquisite or profit. His lordship would allow the appeal. Appeal allowed.

APPEARANCES: *F. Heyworth Talbot*, Q.C., and *Desmond Miller* (*Allen & Overy*); *Roy Borneman*, Q.C., and *Alan Orr* (*Solicitor of Inland Revenue*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[1 W.L.R. 667**

PRACTICE AND PROCEDURE: REVIVAL OF PROCEEDINGS: APPLICATION AFTER PROCEEDINGS WORKED OUT

In re Tate's Will Trusts; Public Trustee *v.* Tate and Others

Wynn Parry, J. 5th May, 1959

Procedure summons.

The applicant took out this procedure summons for an order that certain proceedings by way of originating summons started in December, 1954, and on which judgment was given by Vaisey, J., on 19th April, 1955, to which she was the second defendant, might be carried on by the parties specified in the procedure summons. The proceedings had been brought for the purpose of construing the will of a testator, which raised some doubt as to the correct devolution of an estate. Vaisey, J., said that it was a matter of some doubt, but with reluctance came to the conclusion that the rule in *Shelley's* case ((1581), 1 Co. Rep. 93b) applied and that the estate was to be held in trust for the father of the second defendant absolutely. She was advised that she had a right of appeal and that there was a chance that the decision might be reversed; but she decided not to appeal on the faith of her father's promise that by his will he would leave her his absolute interest in the estate. In May, 1956, she became aware that her father was intending to resile from the understanding and to alter his then testamentary disposition of the whole estate in her favour. He died in 1957, having carried out this intention. Through the dilatoriness of the solicitors then acting for her, she was not advised until 1958 that she could apply under R.S.C., ord. 17, r. 4, for an order that the proceedings might be carried on so that she could apply to the Court of Appeal for leave to appeal out of time.

WYNN PARRY, J., said that as a judge of first instance he was bound by the *ratio decidendi* of Chitty, J., in *Fussell* v. *Dowding* ((1884), 27 Ch. D. 237), namely, that even though an action had been worked out, there was jurisdiction to accede to an application to revive or to carry on the proceedings if the necessary special circumstances were shown. He did not think that what was said by the Court of Appeal in *Arnison* v. *Smith* ((1889), 40 Ch. D. 567) overruled that ratio. He proceeded on the basis that he had the necessary jurisdiction to accede to the application and held that in this case there were special circumstances entitling him to accede to the application.

APPEARANCES: *E. J. A. Freeman* (*Slaughter & May*); *A. Lloyd Stott* (*Robinson & Bradley*, for *Charles Percy & Son*, Alnwick).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[2 W.L.R. 849**

LANDLORD AND TENANT: ACT OF 1954: NOTICE TERMINATING TENANCY: OMISSION OF REFERENCE TO REQUIREMENT OF POSSESSION

In re 395 Brixton Road, Brixton; Bolton's (House Furnishers), Ltd. *v.* Oppenheim

Danckwerts, J. 8th May, 1959

Summons.

In a notice under s. 25 (1) of the Landlord and Tenant Act, 1954, terminating the tenancy of business premises the landlord stated: "I [the landlord] would oppose an application to the court under Pt. II of the Act for the grant of a new tenancy on the ground that on the termination of the current tenancy I intend to demolish the premises comprised in the holding and thereafter to carry out substantial work of construction on the holding . . ." The tenants applied to the court by originating summons for an order under Pt. II of the Act for the grant of a new tenancy and at the hearing it was contended as a preliminary point of law that the notice did not comply sufficiently with para. (*f*) of s. 30 (1) of the Act, since it did not state that the landlord required possession of the premises in order to carry out the work.

DANCKWERTS, J., said that the matter had come to him on the footing that this whole point was referred to him for decision as a preliminary matter, which, in a certain event, would dispose of the whole question at present between the parties. While, however, it was a convenient course, it was preferable that in such cases a *pro forma* summons should be taken out in the proceedings started by originating summons under the Act, asking, for instance, for a declaration on the point which the parties desired to have decided. The point was not one free from difficulty; but on the whole he thought that he was bound to treat *Biles* v. *Caesar* [1957] 1 W.L.R. 156 as inferring that he must not require to import into the provisions of the Act as regards the landlord's notice to determine, the complete strictness of a notice to quit under the ordinary law of landlord and tenant. As it was a necessary condition of reliance on ground (*f*) that possession should be essential for the carrying out of work, he was entitled to infer that when a landlord stated that the grounds on which he relied were demolition, he must by inference also be importing a reference to the requirement that the work could not be carried out reasonably without obtaining possession of the whole of them. The notice given by the landlord did indicate fairly to the tenant the grounds on which his application would be resisted, and it was sufficient to comply with the provisions of the Act.

APPEARANCES: *R. E. Megarry*, Q.C., and *S. N. Bernstein* (*Harold Benjamin & Collins*); *L. A. Blundell*, Q.C. (*Harris, Chetham & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[1 W.L.R. 685**

Queen's Bench Division

RATING: DISTRESS WARRANT: APPLICATION: JURISDICTION TO DETERMINE WHETHER RATES DUE

Evans *v.* Brook

Lord Parker, C.J., Donovan and Salmon, JJ.
30th April, 1959

Case stated by Crewe justices.

A bowling club, having paid part of the total rates levied in respect of its bowling green and premises, claimed that the remainder, namely, £126 11s. 8d., was the sum in which they were entitled to relief under s. 8 (1) (*c*) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, as being a "hereditament used as a playing field (that is to say, land used mainly or exclusively for the purposes of open-air games or of open-air athletic sports) occupied for the purposes of a club . . ." The rating authority applied for a distress warrant in respect of the sum alleged to be due. Both the bowling club and the rating authority agreed that the magistrates had jurisdiction to decide whether the club was entitled to the relief claimed or not, and that, if it was not, the sum claimed was due. The magistrates held that they had no jurisdiction to decide whether the club was entitled to rating relief under s. 8 of the 1955 Act, and, accordingly, issued the distress warrant.

LORD PARKER, C.J., said that for a long time the position seemed to have been that in an application for a distress warrant the magistrates had no jurisdiction to go into the question of the validity of the amount claimed if that could be the subject of an appeal, but by 1916 the position had rather changed, for the Court of Appeal in *Whenman* v. *Clark* [1916] 1 K.B. 94, 111, approved a rule laid down in the Divisional Court "that the justices have jurisdiction if the question is whether the defendant ought to have been rated at all, or, if at all, for the full rateable value." Since that case it was clear that when there was no substantial dispute on the facts, it was for the magistrates to inquire whether the amount claimed was due, having regard to some exceptions in relief. In the present case the facts were largely agreed. It was a perfectly simple issue and the authorities forced one to hold that this was a matter within the jurisdiction of the magistrates. Such matters were always within their jurisdiction subject to the possible exception that arose if the facts were not agreed and were complicated. That exception, however, was based on convenience and not on any rule of law.

DONOVAN, J., agreeing, said that he suspected that the real question was whether the admitted facts meant that the bowling green and the pavilion constituted a hereditament used mainly for the purposes of open-air games or for open-air athletic sports within the meaning of s. 8. But if all the primary facts bearing on that question were agreed, and the only problem was the true construction to be drawn from them, his lordship did not think that that circumstance was enough to deprive the magistrates of jurisdiction.

SALMON, J., agreed. Appeal allowed. Case remitted to magistrates.

APPEARANCES: *Robin David* (*Gibson & Weldon*).

[Reported by Miss C. J. ELLIS, Barrister-at-Law] **[1 W.L.R. 657**

Probate, Divorce and Admiralty Division

PRACTICE NOTE

HUSBAND AND WIFE: DIVORCE: INSANITY: EVIDENCE

Tate *v.* Tate

27th April, 1959

During the hearing of a divorce suit on the ground of insanity, LORD MERRIMAN, P., gave the following direction:—

The status under s. 1 (1) (*a*) of the Divorce (Insanity and Desertion) Act, 1958, of "the hospital or other institution" in which the patient is received should be established in some way, for example by affidavit of the medical superintendent of the hospital or institution concerned. Likewise, under s. 1 (3), evidence should be given, if it be the fact, that the care and treatment of the patient has been continuous, save for the permitted interruptions.

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[1 W.L.R. 666**

DIVORCE PRACTICE: APPLICATION TO RESCIND DECREE: FAILURE TO APPOINT GUARDIAN *AD LITEM*

Roberts *v.* Roberts & Peters

Stevenson, J. 3rd March, 1959

Subsequent to the granting of a decree *nisi* against a respondent wife on the ground of her adultery with the co-respondent, it was discovered that the co-respondent was an infant. No guardian *ad litem*, as required by the Matrimonial Causes Rules, 1957, r. 66 (3), had been appointed. The petitioner applied by summons to rescind the decree *nisi*.

STEVENSON, J., said that, having regard to the effect of the judgments in *Stanga* v. *Stanga* [1954] P. 10 and *Gore-Booth* v. *Gore-Booth* [1954] P. 1, he was unable to regard any of the other authorities cited by counsel for the petitioner as justifying him in rescinding the present decree. The husband petitioner must move the Divisional Court to rescind the decree and order a rehearing because the original trial was completely vitiated by the defect in service and the present application should, therefore, be dismissed.

APPEARANCES: *Curtis-Raleigh* (*Pothecary & Barratt*, for *Ottaways*, St. Albans); *Niell* (the Queen's Proctor).

[Reported by Miss ELAINE JONES, Barrister-at-Law] **[1 W.L.R. 663**

SHIPPING: COLLISION: TUG AND TOW

Blenheim* (Owners) *v. Impetus* (Owners) The *Impetus

Karminski, J. 16th April, 1959

Action.

The United Kingdom Standard Towage Conditions were incorporated in a contract under which the defendants, who were tugowners, agreed to provide two tugs to tow the plaintiffs' vessel *Blenheim*. One of these tugs, the *Impetus*, approached the *Blenheim* and was making a turn to starboard so as to be able to pass a line to her, when she came into collision with the *Blenheim's* starboard side, causing damage thereto. Prior to the collision no orders had been given from the *Blenheim*, as she had been regularly towed by the *Impetus* and both ships' crews were well acquainted with the necessary towage procedure. At the time of the collision the *Impetus* was in a position to receive any orders given from the *Blenheim* to pick up ropes or lines, but was not yet in a position where those on board her could heave a line to the *Blenheim*, although those on board the *Impetus* were prepared to heave a line and those on board the *Blenheim* were ready to receive such line at the appropriate time. The United Kingdom Standard Towage Conditions provided, *inter alia*: "(1) For the purpose of these conditions the phrase 'whilst towing' shall be deemed to cover the period commencing when the tug is in a position to receive orders direct from the hirer's vessel to pick up ropes or lines, or when the towrope has been passed or to by the tug, whichever is the sooner . . . Towing is any operation in connection with holding, pushing, pulling or moving the ship. (2) On the employment of a tug the master and crew thereof become the servants of and identified with the hirer and are under the control of the hirer or his servants or agents, and anyone on board the hirer's vessel who may be employed and/or paid by the tugowner shall be considered the servant of the hirer. (3) The tugowner shall not, whilst towing, bear or be liable for damage of any description done by or to the tug, or done by or to the hirer's vessel, or for loss of or damage to anything on board the hirer's vessel . . . arising from any cause, including negligence at any time of the tugowner's servants or agents . . . and the hirer shall pay for all loss or damage . . . and shall also indemnify the tugowner against all consequences thereof." The defendants admitted that the collision was caused by the negligent navigation of the *Impetus*, but claimed that cl. 2 and/or cl. 3 of the towage conditions protected them from liability.

KARMINSKI, J., said that he had no difficulty in accepting the contention of the plaintiffs that the burden in this case was on the defendants to establish that they had brought themselves within the protection of cll. 1 to 3 of the towage conditions. Clause 1 had, in his view, extended the ordinary meaning of the words "whilst towing" to cover a state of affairs in which towing was contemplated but not being carried out. It was clear on the evidence that at the time of the collision the *Impetus* was in a position to receive the order to heave the line, but was not in a position until after the collision to carry out such an order.

The fact that the *Blenheim* on this, as on very many earlier occasions, gave no order was in a sense irrelevant. The question was whether at the collision the *Impetus* was in a position to receive orders from the *Blenheim* to pick up ropes or lines had such orders been given. He (his lordship) had come to the conclusion that cl. 1 attached when the tug was in a position to receive orders to pick up ropes or lines. This presupposed that the ship was ready to give such orders, if they were required. But he could not accept counsel for the plaintiffs' submission that a tug could thereafter put herself outside the conditions by getting into a position which might for a short period make it impossible for her to carry out such orders. To import such a condition when the tug was already in attendance on the ship and therefore in danger of incurring damage would, as Scott, L.J., pointed out in the *Glenaffric* [1948] P. 159, 165, be without justification. In his (his lordship's) judgment this collision occurred whilst towing, and there must be judgment for the defendants accordingly. Judgment for the defendants.

APPEARANCES: *J. V. Naisby*, Q.C., and *R. F. Stone* (*Sinclair, Roche & Temperley* for *Botterell, Roche & Temperley*, Newcastle-upon-Tyne); *Waldo Porges*, Q.C., and *H. V. Brandon* (*Bentleys, Stokes & Lowless* for *Bramwell, Clayton & Clayton*, Newcastle-upon-Tyne).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] **[2 W.L.R. 820**

IN WESTMINSTER AND WHITEHALL

STATUTORY INSTRUMENTS

Anti-Dumping (No. 1) Order, 1959. Customs Duties (S.I. 1959 No. 917.) 5d.
Cayman Islands (Constitution) Order in Council, 1959. (S.I. 1959 No. 863.) 1s. 1d.
Croydon Water Order, 1959. (S.I. 1959 No. 895.) 4d.
Fire Services (Conditions of Service) Regulations, 1959. (S.I. 1959 No. 905.) 5d.
First-Aid Boxes in Factories Order, 1959. (S.I. 1959 No. 906.) 5d.
Importation of Potatoes (Amendment) Order, 1959. (S.I. 1959 No. 892.) 5d.
Jamaica (Constitution) Order in Council, 1959. (S.I. 1959 No. 862.) 2s. 4d.
National Health Service (Appointment of Specialists) Amendment Regulations, 1959. (S.I. 1959 No. 909.) 5d.
Probation (Scotland) Amendment Rules, 1959. Criminal Justice (Scotland) Act, 1949. (S.I. 1959 No. 910.) 5d.
Standards for School Premises Regulations, 1959. (S.I. 1959 No. 890.) 11d.
Stopping up of Highways Orders:—
County of Bootle (No. 1). (S.I. 1959 No. 900.) 5d.
County of Caernarvon (No. 1). (S.I. 1959 No. 881.) 5d.
County of Derby (No. 1). (S.I. 1959 No. 901.) 5d.
County of Essex (No. 8). (S.I. 1959 No. 882.) 5d.
County of Essex (No. 9). (S.I. 1959 No. 883.) 5d.
County of Hampshire (No. 1). (S.I. 1959 No. 907.) 5d.
County of Lincoln—Parts of Kesteven (No. 3). (S.I. 1959 No. 897.) 5d.
London (No. 19). (S.I. 1959 No. 884.) 5d.
Nottingham (No. 4). (S.I. 1959 No. 902.) 5d.
Teachers' Superannuation Amending Rules, 1959. (S.I. 1959 No. 891.) 5d.
Turks and Caicos Islands (Constitution) Order in Council, 1959. (S.I. 1959 No. 864.) 1s. 1d.
Visiting Forces Act (Application to Colonies) (Amendment) Order, 1959. (S.I. 1959 No. 874.) 5d.
Visiting Forces (Designation) (Colonies) (Amendment) Order, 1959. (S.I. 1959 No. 875.) 5d.
Wages Regulation (Lace Finishing) Order, 1959. (S.I. 1959 No. 899.) 6d.

SELECTED APPOINTED DAYS

May

28th Anti-Dumping (No. 1) Order, 1959. Customs Duties. (S.I. 1959 No. 917.)

June

1st Post-War Credit (Income Tax) Regulations, 1959. (S.I. 1959 No. 876.)

11th Merchandise Marks (Imported Goods) No. 1 Order, 1959. (S.I. 1959 No. 404.)

14th Housing Purchase and Housing Act, 1959.
Housing (Underground Rooms) Act, 1959.
Restriction of Offensive Weapons Act, 1959.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

A South Middlesex Law Society?

Sir,—Inquiries received indicate that solicitors in South Middlesex—from Twickenham to Staines—are anxious to have their own local law society. If all interested would care to write to me, my committee would put them all in touch and do what it can with (we know) the blessing of The Law Society, which gave us considerable help on our own formation.

W. GILLHAM,
Hon. Secretary, Central Middlesex Law Society.

25 Station Road,
Harlesden,
London, N.W.10.

NEWS FROM DOWN UNDER

The following report was published in the 1st April issue of the *Law Institute Journal*, the official journal of the Law Institute of Victoria and the Queensland Law Society Incorporated.

Annual Meeting, 1959

The attendance of some forty or fifty members of the Institute at the Annual Meeting, although small, was enthusiastic. The tenseness of the election of new councillors was over, and the accounts had all been carefully perused by the profession, so that only a token number felt it incumbent on them to assemble and go through the formalities and elect the new president and his cortège. However, the retiring president's address was worthy of a much larger audience, and one felt sure that if he had had such an audience he would have said something more really worth while . . .

As to the rest of the proceedings, the only arguments that cropped up were personal. Sundry people were thanked for something they obviously did not remember having done.

Mr. Frank Conder, in presenting to the Institute a letter book of an early Melbourne solicitor, gave us a most entertaining address on very early law history of Victoria. Supper was not enjoyed by those present. The only member that attended awoke at 9 p.m. to find himself at a frightfully busy meeting of the Centenary committee.

SETTLEMENT OF CASES: INFORMATION REQUIRED

Solicitors and counsel should inform the Clerk of the Lists in confidence if a case was likely to be settled. Ashworth, J., in making this statement on 29th May, added that parties, their solicitors and counsel would only have themselves to blame if lists continued to collapse and steps had to be taken which would inconvenience them. His lordship said that not so long ago more cases than necessary were put into the list. The practice was discontinued because litigants and witnesses were kept waiting about, but that inconvenience must be weighed against keeping the courts in idleness.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the " Points in Practice " Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Sale of Defective Poultry Shelter

Q. *N, Ltd.*, manufacture various portable buildings for farmers and specialise in meeting the needs of poultry farmers. Mrs. *W* and her husband run a smallholding and (*inter alia*) keep poultry. Mrs. *W* has in the past purchased a number of items manufactured by *N, Ltd.*, and been satisfied. She sees an illustration in a local newspaper of a poultry shelter made by *N, Ltd.*, and orders one through a retail agent. It is delivered to her. A fox penetrates the wire mesh of the shelter and kills a number of chickens. A representative of *N, Ltd.*, agreed that the wire was inadequately secured to the main wooden frame of the shelter, but *N, Ltd.*, now say they have never guaranteed the range shelter as fox-proof and that foxes are a normal risk. Has Mrs. *W* a right of action and, if so, against whom ?

A. In our view, Mrs. *W* may have a right of action against both the retail agent, the seller, and *N, Ltd.*, the manufacturer. Section 14 (1) of the Sale of Goods Act, 1893, enables her to sue the seller if it can be proved that she made known the purpose for which the goods were required so as to show that she relied on his skill or judgment and that the poultry shelter was not fit for this purpose. It may well be that this is a case where knowledge of the purpose for which the goods are to be used will be imputed to the seller (see, e.g., *Manchester Liners, Ltd.* v. *Rea, Ltd.* [1922] 2 A.C. 74). So far as the manufacturers are concerned, *Steer* v. *Durable Rubber Manufacturing Co., Ltd.* (1958), *The Times*, 20th November, suggests that Mrs. *W* may be able to sue them in tort. In the course of his judgment, Jenkins, L.J., said that the defendants were required " to show that they had not been negligent or to give some explanation of the cause of the accident which did not connote negligence." In view of the admission by the representatives of *N, Ltd.*, it may be that they, the manufacturers, would not be able to satisfy this requirement.

Right of Way—Whether Mutual Consent Sufficient

Q. *A* and *B* owners of adjoining houses, share the use of a dual-way between their respective houses without any written agreement or deed of mutual grant of right of way respecting each owner's use of that part of the dual-way owned by the other. The title deeds of both properties are silent and make no reference to the dual-way. The sharing arrangement is believed to have existed for many years. Does an indefeasible right of way arise by prescription in favour of both properties after twenty years or does user with the consent and knowledge of the respective owners defeat the acquisition of a prescriptive right of way over the dual-way ? If user by mutual consent defeats the acquisition of a prescriptive right can either owner terminate the joint user and block up his half of the dual-way ?

A. Presumably these two houses were at one time in joint ownership ; we think if this was so, the court would infer that mutual rights of way were granted over the respective halves of this dual-way to *A* and *B* respectively (or to their predecessors in title) : see *Hansford* v. *Jago* [1921] 1 Ch. 322. Further, a mutual consent of this kind extending over the whole period of twenty years would probably not be sufficient to prevent the acquisition of an easement under the Prescription Act, 1832 (see Gale on Easements, 12th ed., p. 218). Therefore, whether or not both arguments apply in this case, we do not consider that either owner can now terminate the joint user by blocking up his half of the dual-way.

Appointment of President from Board of Directors of Private Limited Company

Q. We act for a private limited company and the board consists of a chairman and six other directors. It is desired to appoint one of these directors president of the company. It is not intended to give this director any additional powers, but it is in the nature of a courtesy title as recognition of his long service. There is nothing in the memorandum and articles referring to a president of the company, and we shall be glad to know if there is any objection to this course being adopted.

A. There is nothing to prevent the directors appointing one of their numbers to an office under the company, if the company has an article on the lines of reg. 84 (3) of Table A to the Companies Act, 1948. The office of president can be created quite simply, by the company in general meeting passing a special resolution adopting a new article which empowers the directors to appoint a president. Regulations 107–109 of Table A, relating to a managing director, could be taken as a guide. It is necessary to make it clear that the president has no overriding powers, otherwise on his death it might be claimed by the Estate Duty Office that he had " control " of the company for the purposes of the Finance Act, 1940. If the company is a substantial one, and particularly if the appointment of a president is likely to become a regular practice, we should advise the above procedure, which would give official standing to the office of president and define its status. If the company is a small one, and there are no shareholders outside the board, we cannot see that anyone can object to the conferring of the courtesy title of president, even if the articles are not altered.

Refusal of Development Permission—Compensation Claim

Q. Clients of ours are the owners of 2·82 acres of freehold land (including two small cottages). A claim was made for loss of development value and on 17th August, 1951, development value was determined at £175, being the difference between the unrestricted value of £375 and the restricted value of £200. In 1958 it was agreed to sell the land to a firm of builders for £1,250, subject to the obtaining of planning permission. Planning permission was applied for, for the erection of houses on the land, and the Minister of Housing and Local Government made a direction under s. 15 of the 1947 Act that the decision be referred to him. After the holding of a public inquiry, the Minister on 31st December, 1958, decided to refuse permission for the erection of houses. Can our clients, the owners, obtain any compensation and, if so, on what basis ? Except for the two cottages the land is used for agricultural purposes. The reason for the Minister's decision was that to permit the development of the site would tend to spoil the character of an adjacent village and in addition would attract still more developments to the area.

A. A claim for compensation should be made within six months of 31st December, 1958, under s. 19 of the Town and Country Planning Act, 1954. On the subject see generally Pt. II of this Act and in particular s. 22 and s. 25. The regulations made under s. 22 are the Town and Country Planning (Compensation) Regulations, 1954, S.I. 1954 No. 1600. Forms of claim should be obtainable from the local planning authority. The compensation payable may be expected to be the £175 plus one-seventh thereof.

Obituary

Mr. William Henry Banks, retired solicitor, of Ilford, died on 22nd May, aged 92.

Mr. Thomas Baker Jones, retired solicitor, of Newport, Mon., died on 26th May, aged 96. He was admitted in 1886. Mr. Jones, believed to be the oldest Rugby Union international player, scored Wales' first international championship try against Ireland in 1882. He won five caps as a Newport player.

Mr. Frank Kershaw, retired solicitor, of Northwich, died recently, aged 79. He was admitted in 1921.

Mr. Ingram Joseph Lindner, Q.C., died recently, aged 46. He was called to the Bar in 1935.

Mr. William Wright, solicitor, of Dudley, died on 21st May. He was admitted in 1914.

NOTES AND NEWS

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

The following notices of the preparation of maps and statements under the above Act, or of modifications to maps and statements already prepared, have appeared since the tables given in previous volumes :—

Draft Maps and Statements

Surveying Authority	Districts covered	Date of notice	Last date for receipt of representations or objections
County of Cornwall	Fowey Borough; Newquay and Padstow Urban Districts: modifications to draft maps and statements of 12th July, 1955, 19th November, 1956, and 11th May, 1957	7th February, 1959	14th March, 1959
Derbyshire County Council	Repton Rural District; Swadlincote Urban District: modifications to draft map and statement of 27th November, 1953	14th May, 1959	27th June, 1959
Devon County Council	Newton Abbot Rural District: further modifications to draft map and statement of 17th March, 1958	6th January, 1959	14th February, 1959
Dorset County Council	Poole Borough: modifications to draft map and statement of 1957	15th May, 1959	19th June, 1959
County of Lincoln, Parts of Lindsey	Scunthorpe Borough; Barton-upon-Humber and Brigg Urban Districts; Glanford Brigg Rural District: further modifications to draft map and statement of 4th December, 1953	6th April, 1959	11th May, 1959
Montgomeryshire County Council	Newtown and Llanidloes Rural District	5th January, 1959	30th May, 1959
North Riding County Council	Various parishes in the area of the council: further modifications to draft map and statement of 14th November, 1958	3rd April, 1959	2nd May, 1959
Northumberland County Council	Belford, Bellingham, Hexham and Rothbury Rural Districts: further modifications to draft map and statement of 29th January, 1958	12th February, 1959	26th March, 1959
Nottinghamshire County Council	Mansfield Borough; Kirkby-in-Ashfield, Mansfield Woodhouse, Sutton-in-Ashfield and Warsop Urban Districts: modifications to draft map and statement of 1st November, 1955	3rd March, 1959	10th April, 1959
Warwickshire County Council	Rugby and Solihull Boroughs; Bedworth Urban District: further modifications to draft map and statement of 23rd January, 1958	5th March, 1959	6th April, 1959
	Rugby Rural District: modifications to draft map and statement of 1st March, 1954	8th May, 1959	8th June, 1959
	Southam Rural District: modifications to draft map and statement of 5th September, 1958	17th April, 1959	15th May, 1959
	Warwick Rural District: modifications to draft map and statement of 1st March, 1954	3rd April, 1959	4th May, 1959

Provisional Maps and Statements

Surveying Authority	Districts covered	Date of notice	Last date for applications to Quarter Sessions
Cornwall County Council	Lostwithiel Borough; St. Austell and Torpoint Urban Districts	7th February, 1959	14th March, 1959
	Fowey Borough; Newquay Urban District	18th April, 1959	23rd May, 1959
North Riding County Council	Richmond Borough; Aysgarth, Bedale, Leyburn, Masham, Reeth, Richmond and Startforth Rural Districts	21st February, 1959	24th March, 1959
Northumberland County Council	Alnwick, Belford, Castle Ward and Morpeth Rural Districts	13th May, 1959	10th June, 1959
	Glendale, Haltwhistle and Norham and Islandshires Rural Districts	5th February, 1959	5th March, 1959
Somerset County Council	Taunton Borough; Taunton and Williton Rural Districts; Minehead and Watchet Urban Districts	3rd April, 1959	1st May, 1959

Definitive Maps and Statements

Surveying Authority	Districts covered	Date of notice	Last date for applications to High Court
Hertfordshire County Council	Bishop's Stortford and Sawbridgeworth Urban Districts; Braughing Rural District	6th February, 1959	20th March, 1959
	Hertford Borough; Cheshunt, Hoddesdon, Ware and Welwyn Garden City Urban Districts; Hertford, Ware and Welwyn Rural Districts	1st May, 1959	12th June, 1959

Revision of Draft Maps and Statements

Surveying Authority	Date of notice	Last date for receipt of representations or objections
Northamptonshire County Council	10th March, 1959	13th April, 1959
Soke of Peterborough County Council	8th May, 1959	30th September, 1959
Wiltshire County Council	15th January, 1959	23rd May, 1959

DEVELOPMENT PLANS

Proposals for Alterations or Additions Submitted to Minister

Title of Plan	Districts Affected	Date of Notice	Last Date for Objections or Representations
Buckinghamshire County Council	Wing Rural District; Great Brickhill and Stoke Hammond parishes	8th May, 1959	30th June, 1959
	Amersham Rural District; Chalfont St. Giles, Amersham, Seer Green and Chalfont St. Peter parishes	10th April, 1959	30th May, 1959
Gloucester County Borough Council	—	9th May, 1959	30th June, 1959
Isles of Scilly Council	Hugh Town, St. Mary's	6th April, 1959	6th June, 1959
Lancashire County Council	Nelson Borough; Barrowford and Brierfield Urban Districts; Burnley Rural District	15th May, 1959	1st July, 1959
	Thornton Cleveleys and Poulton-le-Fylde Urban Districts; Fleetwood Borough; Fylde Rural District	10th April, 1959	8th June, 1959
London County Council	Camberwell Borough	29th April, 1959	16th June, 1959
Northampton County Borough Council	Northampton County Borough	25th April, 1959	15th June, 1959
Sussex (West) County Council	Southwick Urban District	8th April, 1959	30th May, 1959
Worcestershire County Council	Halesowen Borough	15th May, 1959	30th June, 1959
	Evesham Rural District	3rd April, 1959	25th May, 1959

Amendments by Minister

Title of Plan	Districts Affected	Date of Notice	Last Date for Applications to High Court
City and County of Kingston-upon-Hull	—	10th April, 1959	Six weeks from 10th April, 1959
	—	24th April, 1959	Six weeks from 24th April, 1959
County of Lincoln—Parts of Kesteven	Stamford Borough	11th May, 1959	Six weeks from 15th May, 1959
Middlesex County Council	—	9th April, 1959	Six weeks from 10th April, 1959
Sheffield City Council	City and County Borough of Sheffield	10th April, 1959	Six weeks from 10th April, 1959
County Borough of South Shields	—	27th April, 1959	Six weeks from 27th April, 1959

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